

United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles.

The British Ship "CELTIC CHIEF," Her Tackle, etc., and
JOHN HENRY, Master and Claimant Thereof,
Appellants,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIM-
ITED, an Hawaiian Corporation, Owner of the Steamers
"HELENE," "MIKAHALA," "LIKELIKE," and
"MAUNA KEA," for Itself, the Officers and Crews of
Said Steamers and Other Servants of Said Owners,
Appellee.

The British Ship "CELTIC CHIEF," Her Tackle, etc., and
JOHN HENRY, Master and Claimant, Thereof,
Appellants,

vs.

MILLER SALVAGE COMPANY, LIMITED, a Corporation,
Appellee.
and

The British Ship "CELTIC CHIEF," Her Tackle, etc., and
JOHN HENRY, Master and Claimant Thereof,
Appellants,

vs.


MATSON NAVIGATION COMPANY, a California Corpora-
tion, Owner of the Tug "INTREPID," for Itself and the
Officers and Crew of Said Tug,
Appellee.

VOLUME VII.
(Pages 2497 to 2944, Inclusive.)

Filed

Upon Appeals from the United States District Court
for the Territory of Hawaii.

1914
E. D. Moulton,
Clerk.



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(Testimony of J. R. Macaulay.)

Q. Wasn't she practically the same width amidships that she was at the fo'c's'le deck?

A. She must have been less at each end.

Q. How much more at the break of the fo'c's'le deck than amidships, would you think?

A. She might have been about eighteen inches or so less.

Q. Now, how far was it from the break of the fo'c's'le deck to the extreme point of her bow, to the rail immediately foward?

A. About thirty feet, approximately.

Q. How far from the break of the poop was the capstan located? A. Cabin?

Q. Capstan? A. From the break of the poop?

Q. No, the break of the fo'c's'le?

A. Ten or fifteen feet.

Q. And was it about midway between the sides of the vessel?

A. Right in the center of the deck, as near as I can remember.

Q. What would you say about the possibility of a man standing there at that capstan at that fo'c's'le deck being able to look over the side of the "Celtic Chief" where the "Arcona's" line passed into the vessel and being able to see the "Arcona's" line?

Mr. WARREN.—I object to that, if your Honor please, [2651—1820] calling for a conclusion of the witness, it not being shown that he is possessed of information sufficient—

The COURT.—I allow the question.

A. The "Arcona's" line? Do you mean outside the ship or inside? What portion of the line do you mean?

(Testimony of J. R. Macaulay.)

Q. The line would be ten or twelve inches over the deck where it passed into the vessel?

A. Outside or in?

Q. Outside. A. Not possible to see.

Q. That's because the sides bulge out more or less, isn't it?

A. If a man was standing on the fo'c's'le close by the capstan, it was not possible for him to see over the port quarter outside the bulwarks above the deck.

Q. And the same is true, is it not, of the starboard side? A. The same is true on the other side.

Q. Now, suppose he stood at the, stood at the rail on the fo'c's'le deck, would he possibly look out far enough on the side in view of the line of the Miller Salvage Co. at the fo'c's'le deck and see those lines?

A. If he looked over the rail and leaned over just as far as he could he would see a great portion of the ship's side.

Q. Would he be able to see as far forward or aft as to the place where the "Arcona's" line on the starboard side of the "Celtic Chief" passed into the "Celtic Chief"?

A. It's very doubtful in my mind whether he would.

Q. You don't think he could?

A. I don't think he could.

Q. He couldn't see forward of it?

A. He could see forward, not aft.

Q. I mean aft. A. He couldn't see aft.

Q. How about the port side?

A. The same. Both sides the same.

Q. That would not be a very good place to watch the various lines from the steamers, the towing steamers.

(Testimony of J. R. Macaulay.)

A. No, it wouldn't be a very good place.

Q. There's too much obstruction in the view, is there not?

A. There is considerable obstruction. [2652—1821]

Friday, September 29, 1911.

Q. Captain, it wouldn't take very much difference in the width of the "Celtic Chief" at her fo'c's'le deck to prevent a person leaning over the rail seeing around the side of the vessel, would it?

A. No, it wouldn't take very much.

Q. As a matter of fact, a distance of a couple of feet at the point where he was looking over the rail would come pretty nearly preventing his seeing more than half the distance or half the side of the vessel?

A. It would prevent his seeing just exactly the two feet.

Q. So if two feet inside of the line of the broadest part of the vessel—so that if it was two feet wider amidships, then he'd have to put his head out a distance more than two feet over the rail to see?

A. Yes, he would be at an angle of two feet from where he was standing.

Q. Did you see those men at work on the capstan up there on that fo'c's'le deck?

A. Occasionally.

Q. Were they constantly heaving away on that capstan?

A. No, they would heave away, you know, and get a strain on their second luff and then put a stopper on the first luff and during those times they didn't heave on the capstan.

Q. Is it possible, Captain, that the "Mikahala"

(Testimony of J. R. Macaulay.)

would have shifted to eastward any material distance on Wednesday night during the last half hour of the time preceding the floating of the "Celtic Chief," in view of the position that her anchor was laid in?

A. Quite possible.

Q. It is quite possible? A. Yes.

Q. How is that possible if she was maintaining a strain both on her line and on her anchor chain?

A. Well, a great distance would be observed but a small distance she may have been able to shift a small distance to the eastward or to the westward without being observed in the dark. [2653—1822]

Q. As much as fifty or a hundred feet?

A. Well, to the—if she moved a hundred feet to the westward, that is, towards the "Arcona"?

Q. No, I'm asking to the eastward.

A. Well, it would not be observed so quickly as if she had moved to the westward.

Q. But I'm asking you, Captain, if the "Mikahala" could very well have moved such a distance to eastward if she had had a strain both on her line and her anchor chain, in view of the position of her anchor, as you testified, directly out ahead of her?

A. If her anchor had a heavy strain right just out ahead in direct line with her keel and she was towing in that direction and pulling on the "Celtic Chief," it would be impossible for her to go very much to the eastward or to the westward. She couldn't go very well.

Q. Well, could she go as much as a hundred feet considering the fact that she had only four hundred feet of line as you have testified?

A. To go a hundred feet she would have to slack

(Testimony of J. R. Macaulay.)

a little on her chain cable or come in some portion; she couldn't do it if she didn't.

Q. She would have to ease up considerable?

A. She would have to come in some portion.

Q. She would have to heave up considerable?

A. Heave up or something else.

Q. Something of that kind. Either she would have to ease up on her anchor chain or on her line, or else bring her anchor in?

A. Either one of the three.

Q. Now, Captain, if, as a matter of fact, her anchor was laid further to eastward than you had thought that it was located, that is to say, located at an angle off of her port bow, that would have permitted her, would it not, to have swung further to eastward fifty or a hundred feet had she wished to do so? A. Surely.

Q. As a matter of fact, Captain, isn't it improbable [2654—1823] with her anchor laid and in use the "Mikahala" would be shifted to eastward *any materially*, in view of the fact that the current and swell were striking her on her port side?

A. The current and swell striking her on the port side would have a tendency to prevent her from moving to the eastward.

Q. It was striking her on the port side?

A. On the port side; yes.

Q. Of the "Mikahala"?

A. Of the "Mikahala."

Q. And that was—if she still continued to use her anchor, isn't it improbable that she would have shifted any material distance to seaward in view of the fact that the swell and the current had a tendency

(Testimony of J. R. Macaulay.)

to throw her in the opposite direction?

A. The swell wouldn't have so much effect on her as the current.

Q. Both of them?

A. In the position she was lying, the swell would strike her with a ledge (?), the current would strike her more abruptly on the port side.

Q. Well, now, then, answer my question. Isn't it quite improbable that she would have shifted any material distance to eastward against the current while she was pulling before the "Celtic Chief" came off, if she still continued to use that anchor which you say she had ahead of her?

A. I didn't observe that she moved any distance at all to the eastward.

Q. I'm asking you if it isn't improbable that she would have shifted to eastward or could have shifted to eastward while pulling if she still continued to maintain a strain on her anchor chain laid directly ahead of her as you have testified? A. Yes.

Q. So that, Captain, if she did shift eastward a considerable distance, fifty or a hundred feet during the last half hour preceding the "Celtic Chief's" coming off, isn't it possible and even probable that her anchor was laid, prior to that time or was lying prior to that time on the port bow instead of [2655—1824] directly ahead and that you may have been mistaken in your opinion that the anchor was directly ahead?

A. I don't quite understand that question, Mr. Olson.

Q. I say, if she did in fact shift to eastward fifty or a hundred feet about a half an hour before the

(Testimony of J. R. Macaulay.)

“Celtic Chief” came off, wouldn’t that indicate that you were mistaken in your opinion that the anchor was laid directly ahead of her? A. No.

Q. And wouldn’t it indicate, on the other hand, that her anchor was lying on her port bow at an angle so that she was able to shift in line with her anchor?

A. No.

Q. Why not?

A. Because she might in the meantime have dragged her anchor home and was compelled under those circumstances to move to the eastward and get another hold on the bottom.

Q. Now, then, assume that her anchor did not drag and the hold of the anchor still be the same?

A. No, it would not.

Q. What would your answer then be?

A. If her anchor held and she was pulling continuously on her anchor chain and hawser she would maintain the same position.

Q. And if she did, as a matter of fact, notwithstanding pulling on her hawser and heaving in on her anchor-chain, or maintaining a strain on that anchor-chain, shift to eastward fifty or a hundred feet, that would indicate, would it not, almost conclusively, that her anchor was lying more to eastward than you had thought? A. No.

Q. Even if her anchor held?

A. If the anchor held and it was laying to the eastward it would, and they pulled upon it it would certainly draw the vessel in the direction of the anchor.

Q. Well, you don’t seem to gather the import of my question. [2655—1825] A. No.

Q. I say, if she shifted to eastward fifty feet or a

(Testimony of J. R. Macaulay.)

hundred feet while maintaining a strain on her hawser and also a strain on her anchor chain, wouldn't that indicate almost conclusively, if the anchor did not drag, that the anchor was lying more to eastward than you thought?

A. Yes, if the ship moved to the eastward it would.

Q. That is what it would indicate almost conclusively? A. Yes, yes.

Q. You said that the "Intrepid" had a splendid position, I believe?

A. I believe the "Intrepid" had the first choice of positions and I consider it the very best position of them all.

Q. Of them all. So that when the "Intrepid" was cut loose and the "Arcona" took the position of the "Intrepid," the same would be true of the position of the "Arcona," that she had the best pulling position of all of the towing agencies; isn't that so?

A. That is exactly so.

Q. That is because, is it not, that these two vessels while they were there, that is, each of them, had a position seaward or astern of the "Celtic Chief," and, therefore, pulling in the direction of the least resistance to the "Celtic Chief"; isn't that so?

A. That's so.

Q. Do you remember about what time of day with reference to noon it was that the "Arcona" got her first line attached to the "Celtic Chief"? I mean her first wire line attached to the "Celtic Chief"?

A. As near as I can remember, it was sometime during the afternoon.

Q. Well, was it early afternoon or late afternoon?

A. Early afternoon.

(Testimony of J. R. Macaulay.)

Q. It was early afternoon, wasn't it, early after the noon hour? A. Somewhere about there.

Q. As a matter of fact, she appeared upon the scene slightly [2657—1826] before noon, did she not? A. I really forget.

Q. Now, you said that it was inadvisable for the "Arcona" to attempt to make any pull at the time that she had got her first wire line fast, did you not, because it was low water?

A. Well, there was other reasons.

Q. Didn't you say it was because it was low water?

A. I did, surely.

Q. Did you state on direct testimony any other reasons except low water?

A. Well, that question may not have been asked me.

Q. I see. Well, now, Captain, as a matter of fact, didn't you know that it was practically high water at the time that the "Arcona" made that pull?

A. Well, it may have been high water, I forget now the state of the tide.

Q. So that when you said that it was inadvisable to make a pull at that time because there was low tide, you didn't remember very well, did you, what the state of the tide was? A. I have an idea.

Q. Well, don't you know that it was about high water when that pull was made by the "Arcona"?

A. I don't remember whether it was high water or not at the present time.

Q. You don't remember at all whether it was high or low tide?

A. I remember that I advised the executive officer of the "Arcona" not to pull heavy upon that line or

(Testimony of J. R. Macaulay.)

if he did he would surely break it and he pulled on that line and broke it and I said, "There you are."

Q. In other words, you had the last word and last opportunity to laugh?

A. I answered your question, that's all.

Q. Now, Captain, if you did say on direct that your opinion was that that was not an advisable time to pull because it was low water—

A. That was part of the reason.

Q. I want to know why you said low water when you say that [2658—1827] you don't remember whether it would be low water or high water, low tide or high tide?

A. I may remember a thing last week that I don't remember to-day.

Q. Your recollection may have failed since you testified on direct?

A. They may have improved or they may have failed. There are things that I know to-day that I didn't know last week and there are things that I knew last week that I don't know to-day.

Q. The breaking of that line is pretty clear in your memory, is it not?

A. Very clear, and the situation preceding it.

Q. Well, now, why is it, then, that you have forgotten since you last testified whether or not it was high tide or low tide?

A. There's numbers of things that a person will forget and there's lots of things that are set in a man's memory more than another. That is one of the things that I recollect very well, the breaking of that wire. It was against my advice to the executive officer of the "Arcona."

(Testimony of J. R. Macaulay.)

Q. You know, do you not, that the best time to tow, the most choice time to tow a vessel is during high tide? A. At that particular occasion.

Q. I'm talking about any vessel that was aground.

A. I thought we were—if you're talking about some other vessel, I don't know anything about it.

Q. You don't know whether it is the most choice time to pull on a vessel, at high tide, a vessel aground.

A. Generally so.

Q. You have stated, have you not, that the Inter-Island vessels were pulling at slow speed during low water? A. I have.

Q. Do you know whether that was done on Wednesday during the day?

A. To the best of my knowledge and belief I believe it was so.

Q. Well, now, Captain, it would be possible, would it not, for [2659—1828] a vessel as powerful as the "Arcona" to maintain a strain upon that wire line which would have given some assistance to the pulling of the Inter-Island steamers if the strain were not so great as to break that line?

A. It certainly would.

Q. Yes. A. It certainly would.

Q. And the only reason why it ~~would not~~ be of any use would be because the strain would be so great that it did break, or would break that line; isn't that so?

A. Well, it seemed to me on that occasion that the "Arcona" wished to just try and see what she would do in pulling the "Celtic Chief" off at that particular time and they overdid it. They pulled so strong on that wire that they broke it.

Q. You said on direct, Captain, that the "Arcona"

(Testimony of J. R. Macaulay.)

must have been somewhere in the neighborhood of ten minutes only pulling, somewhere in the neighborhood of ten minutes, when the line broke. Now, is that still your memory in regard to that?

A. Yes, she pulled for a very short time.

Q. Now, you said on direct ten minutes?

A. Well, it may have been ten minutes.

Q. Might have been a little bit more?

A. Couldn't have been a little more.

Q. It might have been a little more? A. Less.

Q. That is your best judgment? A. Yes.

Q. That is, having maintained a strain as you have stated for about ten minutes, it parted?

A. It parted.

Q. Do you remember the state of the sea at that time, whether it was rough or smooth?

A. Well, it was just the same as it had been during the day previously to the parting of the line, the swell rolling in. The swell didn't have so much effect upon the "Arcona" as it did have on the [2660—1829] smaller vessels.

Q. Because the "Arcona" is a heavier vessel?

A. She's a heavier and much more powerful vessel.

Q. And the kind of a swell that was running on Wednesday wouldn't have very much effect on the "Arcona"?

A. Oh, yes, it would have some effect.

Q. But not nearly as much as on the other vessels?

A. But not so much as upon the other vessels.

Q. Do you remember whether or not the "Arcona," after getting both steel hawsers on board the "Celtic Chief," engaged in any manoeuver for the purpose of getting an equal distance on each line or an equal

(Testimony of J. R. Macaulay.)

strain on each line? A. Yes, I do.

Q. Well, did she do that?

A. The executive officer came on board of the "Arcona" and superintended the running of the second line and we were standing both together on the poop and we passed remarks about this line from the "Celtic Chief," the new line, what a nice wire it was, and I said to the executive officer, "Now," said I, "That is a fine piece of wire and if you had the equal of that on the other side you would have two fine wires. When you get this wire fast, for God's sake, don't start in and pull it in two pieces." And he said that they were going to take a steady pull and get the line straightened out so that they would take an equal strain as near as possible. They did so.

Q. They did what? A. They did so.

Q. About what time of day was it they did that?

A. That was late in the afternoon?

Q. Getting pretty nearly dusk, wasn't it?

A. Well, yes, it was late in the afternoon; I can't remember the time it was.

Q. You watched the operation, did you? [2661—1830]

A. Oh, sure!

Q. Did they get an equal strain on the two lines, as far as you could observe?

A. Well, when they run this new wire they found it was too short to reach the "Arcona"; then they got a boat and bent something on to that from the "Arcona"; then they made that fast and got an equal strain.

Q. In order to get that equal strain they were obliged to put some strain, actually place some strain

(Testimony of J. R. Macaulay.)

upon those wires, were they not?

A. No, if one was tighter than the other they would merely slack the one that was tightest. If one was straight out and the other was slack they would haul in on the one that was slack.

Q. The "Arcona" was using her propellers then?

A. No, not at all.

Q. Were the two lines hanging clear of the water?

A. They were forming a slight arch from the stern of the "Arcona" to the stern of the "Celtic Chief."

Q. Slight arch? A. Yes, a slight curve.

Q. Do you mean they formed a bight in the middle which would touch the water?

A. Oh, yes, it touched the water.

Q. Did it touch it very considerable?

A. Not so very much.

Q. That is in the middle?

A. In the middle, in the center.

Q. And they equalized the two lines so that they touched near the same place?

A. About the same.

Q. And the "Arcona," I suppose, was heading directly ahead, so that, so far as her position was concerned, the lines had an equal strain, so that if she had pulled ahead there would be an equal strain on the lines?

A. As far as I could see the lines were equal proportion.

Q. Did you observe whether or not the "Arcona" changed her position much after that?

A. No, I did not. [2662—1831]

Q. Didn't back up nearer to the "Celtic Chief"?

A. No, no.

(Testimony of J. R. Macaulay.)

Q. The lines, so far as you observed, kept in that position? A. They maintained the same position.

Q. During the rest of the evening?

A. During the rest of the evening.

Q. With a bight in the middle which touched the water together at the exact instant? A. Yes.

Q. And that was the condition, was it, of those lines, during the last half hour preceding the floating of the "Celtic Chief," as far as you could observe?

A. Just the same.

Q. And you could observe them, could you?

A. I could.

Q. How were you able to observe those lines Wednesday night after darkness?

A. At times I could observe them by means of the "Arcona's" search-light; then I could observe them a certain distance from the taffrail of the "Celtic Chief," but I couldn't see the lines directly close up to the "Arcona."

Q. But you could see them from the "Celtic Chief" down to where they touched the water, from the "Celtic Chief"? A. Pretty close.

Q. About half the distance, the point where they would touch the water? A. In the center?

Q. Yes, in the middle of the line?

A. About the middle of the line.

Q. Now, then, if witnesses in this case have testified, Captain, that during the half an hour or so preceding the "Celtic Chief's" coming off, those lines were hanging absolutely slack down in the water, the lines hung down from the stern of the "Arcona" into the water and hung down from the stern of the "Celtic Chief" into the water, would that be

(Testimony of J. R. Macaulay.)

[2663—1832] correct or incorrect?

A. I believe that such a statement would be incorrect.

Q. They weren't hanging anywhere near as slack?

A. Not quite as slack.

Q. Not anywhere near as slack?

A. Not anywhere near as slack.

Q. Because they were hanging as you have already described them, with a bight in the middle, slightly touching the water? A. Yes.

Q. Now, if Mr. Dowsett, one of the directors of the Inter-Island Steam Navigation Company, has testified in the manner that I have stated that those lines were hanging directly down from the stern of the "Arcona," what would you have to say about that, during that last half hour or three-quarters of an hour?

A. They might have appeared so from the direction that he was viewing the wire, but he wouldn't get a correct view of it.

Q. It might have appeared so to him but that would be a delusion, would it not, to him?

A. An ocular delusion, I believe.

Q. In other words, if they so appeared to him he didn't get a correct view of their actual condition, did he?

A. As far as he went he might have taken the lines to hang in that position, but to me it was different. I gave you what I thought was the exact position of the lines as I saw them.

Q. You were standing on the poop of the "Celtic Chief"?

A. I was standing right at the taffrail, only on the

(Testimony of J. R. Macaulay.)

poop of the "Celtic Chief."

Q. And you couldn't be mistaken about the angle of those wires? A. I don't think I was.

Q. You weren't viewing those wires from a distance—you were viewing them between the points where they came aboard the "Celtic Chief," weren't you?

A. I was right on the poop. They didn't come aboard at that point where I was standing.
[2664—1833]

Q. You were right between them?

A. I was between the two points.

Q. Between the two lines?

A. Between the two lines.

Q. You couldn't very well have a better position for taking an observation of them, could you?

A. No, it couldn't be improved upon, I don't believe.

Q. Where was Captain Haglund during the last half hour or so preceding the "Celtic Chief's" coming off?

A. Captain Haglund was walking around all over. He was from one deck to another. One minute he would be inboard of the "Celtic Chief" and the next time he would be aboard the "Mikahala." He was a pretty hard man to keep the run of during that time.

Q. Where was he during the last twenty minutes or thirty minutes preceding the "Celtic Chief's" floating?

A. To the best of my recollection, Captain Haglund was aboard of the "Celtic Chief" previous to her floating.

(Testimony of J. R. Macaulay.)

Q. Just previous to her floating?

A. Just previous, a short time, perhaps.

Q. You saw him?

A. I saw him and conversed with him.

Q. Where was he on the "Celtic Chief"?

A. I was standing aft in my usual position at the taffrail at the poop and Captain Haglund came along and he said, "I brought you some nice sandwiches and a piece of pie" and we sat there and we had some sandwiches.

Q. Where was Captain Henry during the twenty or thirty minutes preceding the floating of the "Celtic Chief"?

A. Captain Henry was down below in the cabin.

Q. Was he there when she started finally to move off? A. No, he was on deck.

Q. Whereabouts? A. On the poop.

Q. How long had he been on the poop immediately prior to the time that she began to come finally off the reef? [2665—1834]

A. Oh, he must have been on the poop, well, I should say about half an hour or so.

Q. He had been there about half an hour before the floating?

A. Yes, before she actually floated.

Q. He came up at the same time you did, didn't he? A. No, he came up after I came.

Q. How long after?

A. It might have been five minutes or so.

Q. He came up very shortly after?

A. Oh, yes, directly afterwards.

Q. Now, if Captain Miller has sworn in this suit that he and you and Captain Henry were down in

(Testimony of J. R. Macaulay.)

the captain's cabin, Captain Henry's cabin, for twenty minutes or so immediately prior to the floating of the "Celtic Chief" and that you all ran out on deck at the last moment when the "Celite Chief" was sliding off of the reef, will you state whether or not that is the truth? A. That is not the truth.

Q. If Captain Miller so testified, he was testifying to something that was not true; is that so?

A. I take it that way.

Q. Don't you know? A. I do not.

Q. You know that it was not so?

A. It was not so.

Q. Was Captain Miller down in the captain's stateroom with you and Captain Henry at any time on Wednesday night? A. He was.

Q. How long?

A. Well, he was down there possibly fifteen or twenty minutes.

Q. What were you doing down there at the time that he was there?

A. As I stated before on the previous question, I believe it was Captain Haglund came on board and we sat down on the starboard side of the wheel-box directly at the stern of the ship. He said, "I brought you some nice sandwiches here," and he handed me the sandwiches. [2666—1835] I said, "Well, now, Captain Henry would like to have some of those sandwiches, I know." Says I, "That's a very delicate matter, to offer the master of a ship something to eat on board of his own vessel; however, I'll tackle it anyhow," and I took some of the sandwiches down below and I told Captain Henry, "Here are some very nice sandwiches that the Superintend-

(Testimony of J. R. Macaulay.)

ent of the Inter-Island Company has given me; will you have a share?" and Captain Miller was with the captain at that time in his cabin.

Q. That was about what time?

A. Must have been, oh, about sometime between eleven and twelve o'clock.

Q. I see; go on.

A. So the captain, Captain Henry, he was only too pleased to share in with the sandwiches and we sat there and we ate the sandwiches.

Q. About fifteen or twenty minutes?

A. During that time. Captain Miller didn't feel at all shy about accepting a share of the sandwiches, so we all had a share and consumed the sandwiches. Captain Miller said, "I'm going up on deck," and returned afterwards and whispered in my ear, "I believe she's moving," so we went up forward and I took our bearings.

Q. How long afterwards?

A. Directly afterwards.

Q. How long? A. A little afterwards.

Q. How many minutes?

A. I suppose five minutes or so.

Q. Yes.

A. We went up and we didn't see very much alteration in our bearings. We had marks, bearings, to obtain any motion to the vessel seaward or shoreward. We could see very little difference in the bearings but we could feel that she was inclined to move astern, and we stayed there, and the steamers at this time they were pulling for all they were worth and Captain Miller—they were pulling for all

(Testimony of J. R. Macaulay.)

they were worth and she did jump some and away she went.

Q. Was that immediately after that? [2667—1836]

A. She started very slowly at first. It was shortly after that, probably ten or fifteen minutes after that.

Q. Might have been a little less than that?

A. I don't think it was. About that time.

Q. And that was the time that you and Captain Henry and, that is, immediately prior to this was the time that you and Captain Henry, and Captain Miller were down in the cabin?

A. Fifteen or twenty minues previous to that.

Q. But you and the captain were all on deck five or ten minutes after she—that is, on your way. You went on deck, took your observation, and shortly afterwards the boat began to come off?

A. Began to move.

Q. Now, then, Captain Macaulay, how do you make that consistent with your statement that you were on the deck during the last half hour or more preceding the time of the floating of the "Celtic Chief"?

A. If you'll calculate up those minutes you'll find that we was on deck a half an hour previous to the floating.

Q. You were up on deck with Captain Miller, took your observation, and ten or fifteen minutes afterwards she started to come off—that's so, isn't it?

A. Yes, that's about all right.

Q. Now, then, isn't it your testimony that when she started to come that last time she came off very rapidly—so rapidly, in fact, that Captain Miller's

(Testimony of J. R. Macaulay.)

line and shackle in it jammed in the chock and was caught before you were even able to cut away the shackle; isn't that so? A. No, that is not so.

Q. Let us have what the truth of the matter is.

A. The first general motion of the "Celtic Chief" on that line that took a long time.

Q. Now, how long did it take?

A. I can't tell you how long, but it took a long time.

Q. How long?

A. She moved very, very slow. [2668—1837]

Q. How long was it?

A. I don't know how long.

Q. How long did she continue this slow motion?

A. For quite a time.

Q. Let us have your best judgment in minutes.

A. It took from the time she started to twenty minutes past midnight for her to be actually afloat and close up to the "Arcona."

Q. The last portion of the time she went very rapidly and she approached the "Arcona" at a pretty good rate of speed, but the first motion was very, very slow; very slow. In fact, she closed those bearings just so as to see them look gradually lighter?

A. Yes, that was the first portion, and I am positive that I was on deck a half an hour before the ship was actually afloat.

Q. Now, Captain, she must have been moving all that time for ten or fifteen minutes?

A. She was moving for a considerable length of time, of course, I'm not—I don't—I can't say how long.

Q. That was a considerably more important occa-

(Testimony of J. R. Macaulay.)

sion, was it not, than any other preceding occasion had been?

A. The most important occasion to me was the floating of the ship.

Q. And that was—

A. When she was actually afloat. Nobody knows the time, what this steamer was doing or what that steamer was doing, or what Miller Salvage Co. was doing, the fact of getting her afloat was the most important.

Q. But you took sufficient note of time so you have sworn on your oath that you were on deck at least half an hour before she came off?

A. I am right.

Q. You took sufficient note of the time so that you have also sworn on your oath that it was at least ten or fifteen minutes after you and Captain Miller came on deck the last time from the captain's cabin, you noticed the ship began to move, isn't that so?
[2669—1838]

A. Well, I'm giving you the statement just as near as I possibly can.

Q. You've so sworn, haven't you?

A. Well, if you—I don't know what I've sworn to, what questions have been put to me.

Q. And didn't you swear not more than five minutes ago that it was ten or fifteen minutes after you and Captain Miller came up from the captain's cabin that the ship was observed by you to begin to move?

A. I believe it was.

Q. And you took sufficient note of the time to be able to remember that it was at least ten or fifteen minutes before the ship began to move after you

(Testimony of J. R. Macaulay.)

came out of the cabin? Isn't that so?

A. What I've sworn to and what I've told you is the best of my knowledge.

Q. Did you not take sufficient note of the time to know? A. I took no note of the time.

Q. Didn't you take sufficient note of the time so that you were willing to swear not more than five minutes ago that it was at least ten or fifteen minutes from the time you and Captain Miller came on deck until the ship began to move off?

A. I am willing to swear what I swore to five minutes ago still and if I said it was ten or fifteen minutes—

Q. And you did. Kindly answer my question.

A. I'm answering your question.

Q. You did, did you not, take note of the time?

A. I took no note of the time.

Q. You took sufficient note of the time so that you were willing to swear that according to your best memory and judgment it was ten or fifteen minutes, at least, after you came on deck before that vessel started to come off?

A. I am willing to swear to that and do so. I've said that before because I think it is the truth. Now, I'm willing to say, as I sit in this witness-box, that it was a [2670—1839] short period of time after we came on deck that we observed a rapid motion to the vessel, but may have been ten or fifteen minutes and may have been less, but when she started eventually she increased her speed.

Q. So that it was a rapid motion that you observed?

(Testimony of J. R. Macaulay.)

A. I observed her slow motion before her rapid motion began.

Q. Was that ten or fifteen minutes after you came out of the cabin? A. Beg your pardon?

Q. Was that ten or fifteen minutes after you came out of the cabin? A. After?

Q. Yes, was it ten or fifteen minutes after you **came out of the cabin?**

A. About ten or fifteen minutes.

Q. You took sufficient note of the time to be able to swear now that it was ten or fifteen minutes after you came out of the cabin?

A. I took no note of the time.

Q. How are you able to swear that it was at least ten or fifteen minutes?

Mr. WARREN.—Now, your Honor, I think that it is time to interfere.

Mr. OLSON.—The question is allowed?

The COURT.—Yes.

Q. Kindly answer the question, Captain.

A. That is a pretty hard question to answer. For instance, if I'm standing on the corner here waiting to meet a person and there is some delay and I meet that person, I say, "Well, I've been waiting for you here ten or fifteen minutes." The person will say, "That's not possible; you're only five minutes behind the time." I will dismiss the matter of ten or fifteen minutes. There's an instance where a person may not tell actually the time that has elapsed and so it is in this case. So it seemed to me, ten or fifteen minutes after I was on deck.

Q. I'm not asking you whether you noted the time by your watch.

(Testimony of J. R. Macaulay.)

A. It seemed to me that you wanted that.
[2671—1840]

Q. I want you to testify how you were able to tell.

A. It seemed to me that, about.

Q. I'm not doubting or even believing your answer; I'm trying to get the truth of the case.

A. I'm trying to give you the truth of the case.

Q. Now, then, Captain, by the same rule or method of determining the lapse of time, kindly state how much time elapsed after those ten or fifteen minutes had expired until the vessel came off the reef finally. I'm not asking you for the passing of time by the hand of the clock.

A. That is a question that I should think for this Honorable Court to decide and not for me.

Q. And I'm asking you to state what you observed and what is your judgment and recollection in connection with the same. Now, kindly do so.

A. After the ship started to move slowly she increased her momentum as she went astern and the further she went astern the quicker she increased her momentum until she was actually afloat and coming close up to the stern of the "Arcona." The time elapsed was probably half an hour or three-quarters until we were close up to the stern of the "Arcona."

Q. How long would you say elapsed between the time that the "Celtic Chief" actually came off the reef until she came near to the "Arcona"? How long did it take the "Celtic Chief" to travel the intervening distance?

A. From about a half an hour to three-quarters of an hour, as near as I can remember.

Q. You think it took a half an hour or three-quarters

(Testimony of J. R. Macaulay.)

ters of an hour for her to float from the reef until the "Arcona"?

A. Yes, until she was close up to the "Arcona."

Q. From the time that the "Celtic Chief" was actually afloat?

A. From the time that she started. [2672—1841]

The COURT.—The question is, as I understand it, how long did she travel in the water to the "Arcona."

Mr. OLSON.—Now, what I'm asking is, how long a time it took for the "Celtic Chief" to move from the position she was in immediately after she became loose of the reef until she arrived near to the "Arcona"?

A. Oh, that's a new question.

Q. That's the question I asked a few minutes ago.

A. I didn't understand it that way.

Q. Well, go on and answer now.

A. Possibly fifteen minutes or so.

Q. It took fifteen minutes for her to travel four hundred feet, did it?

A. About fifteen minutes or so, as near as I can remember.

Q. And the "Arcona" was in very serious danger of being rammed by the "Celtic Chief" coming with that momentum?

A. Yes, she was for a time.

Q. She couldn't have had much momentum could she, if she was only coming at the rate of four hundred feet in fifteen minutes?

A. She had considerable momentum.

Q. Is that what you call considerable momentum?

A. For a vessel moving, yes. She didn't have a

(Testimony of J. R. Macaulay.)

pressure of canvass but you must remember there was the "Mikahala" towing the "Celtic Chief"; there was the Miller Salvage Co.'s ground tackle pulling her.

Q. Captain Macaulay, assuming that the "Arcona" was six hundred feet away from the "Celtic Chief" before she started to move in deep water toward the "Arcona," that would be about a ninth of a mile, would it not, there being 5,280 feet in a mile? A. Somewhere about that.

Q. And if she was travelling at the rate of six hundred feet in fifteen minutes she would be travelling at the rate of one mile in a little over two hours, wouldn't she? [2673—1842]

Mr. WARREN.—I think, your Honor, that is not a proper assumption.

The COURT.—I allow the question.

Q. Now, then, answer the question, Captain Macaulay. A. What was the question?

(Question read.)

A. Yes, about that.

Q. And you still maintain that that's as fast as she was going when she was in the water?

A. No.

Q. What is your testimony then?

A. Her momentum was increasing as she went astern; she didn't maintain the same rate of speed at any time; from the moment of her starting off the reef she increased her speed and continued to do so until she was entirely afloat and proceeding towards the "Arcona." There was no time at all that her speed was the same.

(Testimony of J. R. Macaulay.)

Q. Now, I'm asking you, Captain, how long it took for her to travel to the point where she was close to the "Arcona" from the time that she was in the—afloat for the first time. Now, answer that question.

A. I've answered that question, I believe.

Q. Is it fifteen minutes or less? A. What?

Q. Fifteen minutes or less?

A. From the time she started?

Q. From the time that she was afloat.

A. About fifteen minutes.

Q. Until she reached the point where she was close to the "Arcona"? A. About that time:

Q. So it took her fifteen minutes after she was afloat to travel a distance less than six hundred feet, after she was afloat?

A. Oh, she never reached the "Arcona."

Q. You said that she came within fifty or a hundred [2674—1843] feet of her.

A. She came pretty close.

Q. Fifty feet? A. About that.

Q. Your testimony is, is it not, that the "Arcona" was not more than six hundred feet away while attached to her? A. About that distance.

Q. When the "Celtic Chief" first came afloat she must have been a little nearer than about five hundred feet from the "Arcona" have proceeded seaward somewhat?

A. Yes, she was approaching the "Arcona."

Q. So that she had to travel then about five hundred feet at the utmost in that fifteen minutes?

A. About that.

Q. She travelled five hundred feet in fifteen minutes? A. About that.

(Testimony of J. R. Macaulay.)

Q. And that was as fast as she was going?

A. We could gauge her speed to a certain extent, but it's a pretty hard matter to get the speed of the vessel while she was increasing?

Q. Didn't you say during the last time she was coming off the reef she traveled pretty rapidly?

A. And increasing.

Q. Do you think she was travelling as slowly as at the rate of a mile in two hours during the last part of the time she was coming off the reef?

A. Well, I have no means of ascertaining her speed at any particular time, but I do know for a fact that her first movement was very, very slow and that her speed increased as she went astern. It wasn't the same at any particular point. It was always increasing until she was afloat and approaching the "Arcona."

Q. Now, Captain Macaulay, kindly state how long, according to your best judgment and recollection, it was from the time that you first observed that she was beginning to move slowly until she was afloat, actually afloat for the first time. [2675—1844]

A. About half an hour or so.

Q. A half an hour. Would it be less than a half an hour? A. Somewhere in that vicinity.

Q. And fifteen minutes later she came within fifty feet of the "Arcona"? A. About that.

Q. So that from the time that you first observed her beginning to move slowly until she came within fifty feet of the "Arcona," forty-five minutes had elapsed? A. Somewhere about that.

Q. Who else was with you on the poop observing

(Testimony of J. R. Macaulay.)

this motion of the "Celtic Chief" at first, this slow motion?

A. Captain Haglund, I believe, was there.

Q. Anybody else?

A. I forget of any other person being there.

Q. Wasn't Captain Miller there?

A. No, I believe Captain Miller was down on the main deck at that time.

Q. What was he doing there?

A. He was tending to his gear.

Q. Where were you at the time that that shackle was jammed and was being pulled through the chock?

A. I was right alongside of that chock.

Q. That's on the poop, isn't it?

A. That's on the after end of the poop.

Q. Now, Captain, how long was it that she kept moving in this slow fashion that you have testified to? How long did it continue to move slowly off the reef before she began to get any considerable momentum?

A. I should say she moved very slowly for about ten or fifteen minutes.

Q. There was no question in your mind that she was moving forward?

A. That was a certainty.

Q. Absolute certainty? A. Yes.

Q. And Captain Haglund was the only man that you observed on [2676—1845] the poop with you?

A. Captain Henry may have been there.

Q. Do you know when it was that one of the German cruiser's officers came on board the "Celtic Chief" about that time? A. After that time.

Q. How long after that time?

(Testimony of J. R. Macaulay.)

A. Might have been five minutes or so.

Q. He was on the poop there then during the last five or ten minutes of this slow motion of the "Celtic Chief"?

A. The commander of the "Arcona" was on the poop, also the executive officer, while she was still, was travelling slowly?

A. While she was travelling slowly, of course, she was increasing. She really at that time had moved fifty feet about.

Q. Now, Captain Macaulay, you said that you first noticed that the ship was moving seaward slowly after you came out of the cabin with Captain Miller, about five minutes after you felt this seaward motion, the commander of the "Arcona" and the first officer came up on the poop and sat there observing it with you; isn't that right?

A. Pretty near correct.

Q. It continued to move slowly seaward for five or ten minutes more; is that right? A. Yes.

Q. And for the remaining ten or fifteen minutes of the full hour that she was moving off the reef she was moving very rapidly? A. She was increasing.

Q. Was anything said at that time about the "Arcona's" being signalled to begin to pull? Did it occur to you, Captain Macaulay, to suggest that it might be wise to get all of the force that it was possible including the "Arcona"? A. Yes.

Q. What did you say? [2677—1846]

A. I said to the executive officer of the "Arcona," "Why don't you steam ahead?"

Q. When was that that you said this to him?

A. The ship was coming astern.

(Testimony of J. R. Macaulay.)

Q. How long after they came on the poop?

A. Shortly after.

Q. How long?

A. I can't tell you exactly.

Q. Ten or fifteen minutes afterwards?

A. It may have been later.

Q. How long then? Didn't it occur to you that during *of of* these ten or fifteen minutes after they first came on the poop while the vessel was travelling slowly seaward, when you knew for a certainty that she was beginning to come, didn't it occur to you that it would be wise to get all of the forces at work on her, and why didn't you then suggest that the "Arcona" help? A. I did suggest it.

Q. Ten or fifteen minutes afterwards. Why didn't you do so at first?

A. Because there was an arrangement made with the "Arcona" to send a signal on board of the "Celtic Chief" with an officer and it was for this officer to observe the motions of the "Celtic Chief" and he was directed by the commander of the "Arcona" the moment he saw the ship move to show a rocket and alarm the "Arcona."

Q. Was this signal made on the "Celtic Chief" when the executive officer and man came?

A. The signal-man came on board with the executive officer and he was standing on back of the pilot-house.

Q. Now, then, you said this was about five minutes after she was beginning to move seaward. Did you suggest to the commander and the executive officer that the "Celtic Chief" was moving or suggest that they direct that their signal be given?

(Testimony of J. R. Macaulay.)

A. I did not. [2678—1847]

Q. You waited ten or fifteen minutes after—

A. It wasn't part of my business at all to make any suggestion for signals.

Q. You did suggest it?

A. Says I, "Why don't you steam ahead?"

Q. You did call the executive officer's attention to the fact that it would be better to steam ahead?

A. I did.

Q. Ten or fifteen minutes later?

A. I said, "Why don't you steam ahead."

Q. In the meantime you had been sailing for ten or fifteen minutes?

A. Or in other words, I wasn't running the "Arcona."

Q. It never occurred to you that in view of the fact that you regarded yourself in duty bound to do everything possible to get the "Celtic Chief" off the reef, it never occurred to you that it was a part of your business to even make a suggestion to the officers of the "Arcona" that inasmuch as the "Celtic Chief" was beginning a motion seaward they had better give the help of the "Arcona"?

A. I had the idea.

Q. Why didn't you act upon that idea?

A. Because at that time there was no further assistance required.

Q. Oh, that was the reason?

A. The vessel was approaching her very rapid and the "Arcona's" assistance at that time would be too late.

Q. I see.

A. That is so. There is no use in me giving any

(Testimony of J. R. Macaulay.)

advise on that matter.

Q. Captain Macaulay, you said that it took a half an hour after she first began her seaward motion?

A. I say so still.

Q. And it was five minutes after that the officers came on the poop? A. About that time.

Q. So that about twenty-five minutes later the "Celtic Chief" [2679—1848] came off the reef finally? A. That's so.

Q. And you, nevertheless, thought that it was unnecessary to ask the "Arcona" to give any assistance during these twenty-five minutes of more or less uncertainty as to whether or not the "Celtic Chief" would come off?

A. There was no uncertainty about it.

Q. Why didn't it occur to you that it would be wise to leave nothing open to chance?

A. There was no chance after she had started.

Q. You are absolutely certain? A. Sure.

Q. Suppose one of these sudden swells that you talk about had begun to come in, then what?

A. The ship had sternway at that particular time and the ship was going into deep water, and if swells had come at that time there was sufficient help there to take care of the ship without any further assistance from the "Arcona."

Q. But you knew, Captain Macaulay, from the time that they came aboard, the German cruiser officers, it was fully twenty-five minutes according to your testimony before she finally came off. Do you mean that she was travelling so rapidly during the first ten or fifteen minutes of that twenty-five minutes that there was absolutely no question as to

(Testimony of J. R. Macaulay.)

whether or not she would come off?

A. After the ship started there was absolutely no question as to the final result.

Q. And she was travelling so rapidly during that first ten or fifteen minutes that no matter what occurred and still might have occurred suddenly, it would not in any way have retarded the progress of the "Celtic Chief"?

A. To the contrary; it would have helped her.

Q. It would? A. It would.

Q. Now, then, Captain Macaulay, how many feet do you suppose she was travelling per minute?

A. I have no idea. [2680—1849]

Q. How far was she on the reef?

A. Her whole length.

Q. That was about a little over two hundred feet?

A. Yes.

Q. It took her about half an hour to move 260 feet or less before she was in deep water?

A. Well, if after she moved she increased the depth of water—from her start to her final touch of the reef, she was increasing the depth of the water as she was coming astern.

Q. Captain Macaulay, did she have to move the full length of the "Celtic Chief" before she was really afloat? A. No, not necessary.

Q. Didn't she have to travel considerably less than 260 feet? A. She did.

Q. As a matter of fact she only had to move forty feet? A. Well, I wouldn't—

Q. Now, wait a minute, Captain. Didn't you testify that the forty feet heaved in on the Miller Salvage Company's line was sufficient to bring the

(Testimony of J. R. Macaulay.)

“Celtic Chief” off? A. I did.

Q. So she only had to travel forty feet from the time she began to move until she was really clear; isn't that so? A. That is so.

Q. So that it took her twenty-five minutes, no, it took her twenty minutes to travel forty feet and yet she was travelling so rapidly during the first ten or fifteen, after the first five minutes had elapsed, that there could have been no question in your mind that she would come off even though the “Arcona” did not assist? That was clear in your mind?

A. Very clear.

Q. So clear that you were willing to take any chance against it?

A. I was willing to take the chance of dispensing with the services of the “Arcona.”

Q. Did it occur to you, Captain, that the German cruiser is [2681—1850] a Government vessel which never makes claims for salvage?

A. I did not take that into consideration.

Q. You know that Government vessels never make claims?

A. I don't know about their agreement.

Q. You never heard of that?

A. I never heard that.

Q. You mean to say, during your forty years as a navigator, that you never heard sufficient to satisfy your own mind that Government vessels never make claims for salvage?

Mr. WARREN.—I object to the question as immaterial.

The COURT.—I will allow the question.

A. I've always understood that a Government ship

(Testimony of J. R. Macaulay.)

would give her assistance to any other ship free of charge.

Q. Yes. Now, then, you knew that the German cruiser was a German cruiser and was a Government vessel?

A. I knew she was a German cruiser and a Government vessel.

Q. Now, then, Captain Macaulay, you testified that it was a part of your desire earlier in the case to keep the expenses of getting the "Celtic Chief" off the reef as low as possible. A. It was.

Q. And it didn't occur to you, Captain Macaulay, that it might be a good thing for the vessel to have a Government vessel that would charge nothing give its services to her? A. It did occur to me.

Q. Why, then, didn't you suggest that the "Arcona"—

A. I did suggest that the "Arcona" start pulling. I gave the "Arcona" all the advice I possibly could.

Q. Did you suggest that during the first few minutes of these officers' being on the deck, poop deck?

A. I did not.

Q. You waited ten or fifteen minutes?

A. Yes, I did.

Q. Though the vessel was moving so rapidly that it would be practically impossible for the "Arcona" to get under way and put [2682—1851] any force, strain upon her lines?

A. I was under the impression that the "Arcona" was ready at any instant to give assistance to the "Celtic Chief." At that particular time that you refer to, this five or ten minutes, I was observing the marks on shore to find the motion of the "Celtic

(Testimony of J. R. Macaulay.)

Chief." I couldn't give my attention to everything at that particular moment. I wanted to make—

Q. Beg your pardon?

A. I wanted to make myself sure that the "Celtic Chief" was moving in a safe direction. That took time, ten or fifteen minutes, before I felt positive that the vessel was going to the southward.

Q. Captain Macauley, didn't you testify that you had observed this seaward motion during five minutes preceding the executive officer's coming aboard, and haven't you testified that you were already positive that she would come seaward?

A. I say so still.

Q. Didn't it occur to you then that it would be wise to make this an absolute certainty by getting the assistance of the "Arcona"? A. I did.

Q. Did you suggest that to the officer before ten or fifteen minutes had elapsed?

A. I suggested to the executive officer of the "Arcona" as soon as possible, "Steam ahead with your ship," and his answer was, "We can't steam ahead." I says, "Heave away on your anchor, do something to get away," and they heaved away on their anchor and proceeded out to sea. That is, they get a strain on their lines and went ahead on their propeller.

Q. Haven't you testified here, sworn on your oath, that the officers of the German cruiser were up on the poop deck with you at least ten or fifteen minutes?

A. Yes, they were doing exactly as I was doing.

Q. Did you not wait for ten or fifteen minutes after they had come up on the poop alongside of you before you suggested that they steam ahead?

A. I did. [2683—1852]

(Testimony of J. R. Macaulay.)

Q. Now, then, Captain Macaulay, you were more certain than before, at that time when you gave that suggestion, that she was going to come off the reef?

A. The more she came off the more positive I was.

Q. Before that time you hadn't been so positive?

A. When she started.

Q. Now, then Captain Macaulay eventually that she steamed ahead, when you were sure that she was coming off without any question at all?

A. In the first place, I didn't believe it would be the proper thing for me to try to tell a commander of a German man-of-war how to proceed or how to manoeuver his own ship.

Q. Just a moment. Weren't you pretty free in your advice when she parted the first line?

A. I was.

Q. You didn't stand back from giving advice at that time?

A. No, I gave advice to the master of the ship.

Q. Didn't you advise the commander of the "Arcona" or the first officer? A. Yes.

Q. And you did not refrain from giving advice to the "Arcona" early in the game? A. Quite right.

Q. Haven't you just testified that it wasn't your place to give advice— A. To the commander.

Q. And it was because the commander had come now and he was a man of greater dignity?

A. I gave the commander good advice before and until the "Celtic Chief" was practically off the reef.

Q. Where?

A. When the commander of the "Arcona" was on the poop of the "Celtic Chief" I gave him advice.

(Testimony of J. R. Macaulay.)

Q. When?

A. Previous to the shackle coming into the chock of the Miller Salvage Co., I gave him good advice.

Q. What was the advice that you gave?

A. When the shackle came in and jammed in the chock, [2684—1853] I advised the commander to stand clear.

Q. At the same time you hesitated thereafter about even suggesting to him to give any assistance to the “Celtic Chief”?

A. I advised him right from the start to the finish. I advised him to steam ahead and he told me that he could not steam ahead. Then my second advice was, heave away on your anchor chain.

Q. But you didn't give that advice, did you, until ten or fifteen minutes after he had come up on the poop?

A. I couldn't give him the advice before he came on the poop.

Q. Did you give advice during the ten or fifteen minutes?

A. As soon as I thought it was necessary.

Q. In other words, the fact of the matter is that you never hesitated to give advice or suggestions to the “Arcona” officers when you did regard it necessary to get assistance during the first ten or fifteen minutes of the half hour that the “Celtic Chief” was gradually moving seaward, that's the truth?

A. No, it's not the truth. It's far from it.

Q. Tell me how that is in any way wide of the truth.

A. Because I gave the “Arcona” good advice to

(Testimony of J. R. Macaulay.)

the best of my knowledge how to manoeuver and how to act.

Q. Didn't you swear, Captain Macaulay, that you waited for ten or fifteen minutes after they had come up alongside of you on the poop, all of which time the "Celtic Chief" was moving seaward?

A. Did I make any suggestion to the "Mikahala," did I make any suggestion to the "Helene," did I make any suggestion to the Miller Salvage Company?

Q. They were all pulling?

A. Well, why wasn't the "Arcona" pulling?

Q. Didn't it occur to you that it might be wisdom to get the assistance of the "Arcona" in view of the fact she was not pulling?

A. When I found she wasn't pulling I asked them to steam ahead.

Q. Oh, you hadn't observed that she wasn't pulling—is that the fact, Captain? [2685—1854]

A. No, no. I did.

Q. You knew she wasn't pulling?

A. I knew she wasn't pulling.

Q. Why do you say you waited until you saw that she wasn't pulling before you gave this advice? Isn't that the testimony? Why did you wait until you found they were not pulling before you gave this advice, if you knew prior to this advice actually that she wasn't pulling?

A. It was simply impossible for me or any other man to observe all the manoeuvres of the different vessels at that particular time. I didn't observe the "Arcona" when I was watching the other vessels. There was the Mikahala," there was the "Helene"

(Testimony of J. R. Macaulay.)

there, there was the Miller Salvage anchor out astern and there was the "Arcona." Directly when I saw that the shackle was going to get jammed I went down on the main deck and procured a capstan bar and released that shackle myself. Here was the executive office; I advised him as soon as possible to steam ahead. He said he couldn't do it on account of being afraid of getting his heaving lines in his propeller.

Q. Do you know that the "Arcona" was pulling up to the time that you gave that suggestion that he steam ahead? A. He didn't say so to me.

Q. Had you observed her? A. I did.

Q. You knew she was not pulling?

A. I am of that opinion.

Q. There was no strain on it.

A. Yes, there was no strain on it.

Q. So you knew she wasn't doing any pulling?

A. That's my impression.

Q. Now, do you wish to vary your testimony?

A. I'm not going to start off and tell you things I'm not positive of.

Q. Are you positive that the "Arcona" was not pulling or aren't [2686—1855] you positive about that? A. What would you call pulling?

Q. I'm asking you a question.

A. If the lines were slack she was not pulling in my estimation.

Q. Are you positive that there was no strain on her lines?

A. I am positive that there was no strain on her lines.

(Testimony of J. R. Macaulay.)

Q. Now, then, Captain Macaulay, were you positive of that fact from the time that the "Celtic Chief" was moving seaward up to the time you first gave this suggestion to the executive officer of the "Arcona"? A. Positive of what?

Q. That there was no strain on the "Arcona" lines? A. I was.

Q. Why, knowing that to be the fact, didn't you suggest before ten or fifteen minutes had elapsed at any part of which you could have suggested to the "Arcona's" officers—why didn't you suggest to them that the assistance of the "Arcona" must be had in order to insure the final floating of the "Celtic Chief"?

Mr. WARREN.—I object to the question on the ground it has been asked and answered, several times.

Mr. OLSON.—I withdraw the last question. In order to make it clear, why, Captain Macaulay, if you knew and were positive that there was no strain upon the "Arcona's" lines during the first fifteen minutes or twenty minutes of the time that the "Celtic Chief" was moving seaward, according to your observation, why didn't you suggest as soon as the "Arcona" officers came on board and up on the poop alongside of you, that the "Arcona" now give assistance and attempt to get the "Celtic Chief"—pull to get the "Celtic Chief" out of her precarious condition.

Mr. WARREN.—Same objection.

Q. In view of the fact that the other agencies were pulling and that the "Arcona" was not. [2687—1856]

(Testimony of J. R. Macaulay.)

Mr. WARREN.—Same objection.

The COURT.—Objection overruled.

Q. Why did you wait ten or fifteen minutes before making that suggestion?

Mr. WARREN.—That is a repetition.

Q. Let us have the first question.

(Question read.)

A. At that time the “Arcona” officers came on board, as near as I can remember, the executive officers came on board and also a signal-man. I observed that very closely. The signal-man was stationed or ordered to go on deck of the pilot-house with his signal light. At this time the “Celtic Chief” was moving. He explained, the executive officer explained to the signal-man in German, which I could not understand, how to burn or show those signal lights.

Mr. OLSON.—Now, then, if the Court please, I move to strike the lights on the ground that it is obvious that the witness doesn’t know what instructions the officer was giving to the signal-man.

A. He was talking his own language with this signal-man.

Mr. OLSON.—I move to strike on the ground he couldn’t understand.

The COURT.—That may be stricken.

A. The executive officer was talking with this signal-man. I didn’t wish to interrupt the officer while he was talking. That took considerable time.

Q. Fifteen minutes?

A. It took considerable time. The exact time I don’t know. The next thing I saw was the signal-

(Testimony of J. R. Macaulay.)

man throwing these lights, then I said to the executive officer, "Why don't you go ahead?" something to that effect. Go ahead, his lines were all slack at that time. Now, that took ten or fifteen minutes.

Q. Now, that's the reason?

A. That was one of the reasons. Now, I wasn't standing there listening back of this executive officer and this signal-man only. I was at the same time taking bearings of the vessel. I couldn't be at a half a dozen parts of the ship. [2688—1857] I was doing the best I could for the ship.

Q. Were you giving orders and moving about?

A. Giving advice.

Q. Giving advice to anybody during those ten or fifteen minutes preceding this?

A. At that particular time I wasn't.

Q. Why didn't you make the suggestion to the commander who was giving these orders?

A. I didn't see the commander at that time.

Q. He was not on board the poop deck?

A. He may have been.

Q. Didn't you say a few minutes ago that after five minutes you observed the "Arcona" officers, the commander and the signal-man come up on the poop deck? A. I believe so.

Q. Why didn't you make this suggestion to the commander?

A. I had no conversation with the commander, only on that occasion I asked the commander to stand clear of that shackle or he might get hurt, and he didn't seem to pay any particular attention to that advice and the shackle did come in and strike him in the leg.

(Testimony of J. R. Macaulay.)

Q. Now, then, Captain Macaulay, isn't the real truth of the matter this, that you and Captain Miller and Captain Henry were down in the cabin until there was a bump felt when the "Celtic Chief" finally began to move off and you all rushed out on deck and by the time you had got on deck and reached the poop the "Celtic Chief" was off?

A. That is not the truth.

Q. If Captain Miller says that is true it's not true?

A. I don't know what Captain Miller says.

Q. If he says that he's not telling the truth?

A. He's not telling the truth.

Q. Could there be any doubt about the German officers' being there without observing the seaward motion of the "Celtic Chief" from the time they came up on the poop alongside of you? [2689—1858] Could there be any doubt about their having observed it?

A. No, I don't believe there could have been any doubt. They could just see any difference the same as I could.

Q. Didn't you point it out to them?

A. Yes, I believe I did.

Q. Didn't both of them jump in their places?

A. They fired their signals immediately afterwards.

Q. How soon was it after you told them that they jumped in their places? A. I can't remember.

Q. How soon? A. I can't remember.

Q. How soon, approximately?

A. I don't remember whether I told them whether she was moving or not.

(Testimony of J. R. Macaulay.)

Q. Why did you say a few moments ago that you did tell them?

A. Possibly I did. I may have told them so but I may not have told them in time for them to do anything.

Q. Now, you believe you did or do you believe you didn't?

A. I believe I remarked to the executive officer, "We're approaching you very closely."

Q. Didn't you tell them when they first came up on the poop?

A. I forget what I did say when they first came on the poop.

Q. Didn't you say, Captain Macaulay, that you pointed out to them that the ship was moving seaward and they took the same observations that you did. Didn't you testify to that not more than a minute ago?

Mr. WARREN.—Now, I submit, your Honor, that is simply misquoting the testimony.

Q. Now, then, Captain, I withdraw the last question, then, and we will forget this and get at the truth of the matter. When you pointed out to them that the vessel was moving seaward did they take note of the fact?

A. I suppose they did.

Q. Did they? A. Well—

Mr. WARREN.—I think that's an answer your Honor. [2690—1859]

The COURT.—I allow the question.

Q. Answer the question, Captain Macaulay.

A. What was the question?

Q. Did they note that the vessel was moving seaward?

(Testimony of J. R. Macaulay.)

A. As near as I could understand or observe, they did by burning their signals.

Q. But not before then as far as you know?

A. Well, the fact of them coming on board the ship at the time they did they could see that there was something doing on board of the "Celtic Chief" and they came aboard and I presume they observed the vessel's movements seaward at that time.

Q. How long was it after you pointed out to them that the vessel was moving seaward that they took note of that fact? A. Just about that time.

Q. Immediately after you pointed it out?

A. About that time.

Q. And that was the first time that you had pointed it out to them?

A. I believe that I did give them what I thought was the movements of the vessel the moment they came on board, or something to that effect. I really forget exactly what transpired between the German officer and myself.

Q. When they came up on that poop, did you immediately point out the fact that the vessel was moving? Did they think so?

A. Immediately after they came on the poop their attention was to have this signal-man placed on deck of that pilot-house. That was, I suppose they considered their first duty.

Q. Do you know, Captain Macaulay, whether or not you told them or pointed out to them that the ship was moving seaward?

A. I can't tell you what I did do at all.

Q. Do you know that that was told them or any-

(Testimony of J. R. Macaulay.)

thing of the kind? A. I can't remember.

Q. But you do know that it was not until fifteen minutes [2691—1860] later that you made the first suggestion to them that the "Arcona" steam ahead.

Mr. WARREN.—I object to the question as asked and answered several times.

The COURT.—Objection overruled.

Q. Answer the question.

A. It was not very long afterwards until I advised the executive officer of the movement of the ship. Might have been ten minutes, might have been fifteen minutes, more or less, I can't remember how long it was, but I got into touch with the executive officer of the "Arcona" as soon as I possibly could and gave him the advice that I thought was best for the "Celtic Chief" and also for the "Arcona." I believe that my first advice to the executive officer was to steam ahead as soon as possible. His answer to that advice was that they couldn't steam ahead.

Q. I'll ask you now if that was the first advice that you gave to the German officers after they came on the poop? A. I really forget.

Q. You don't know? A. I really forget.

Q. Did you not say before it was at least ten or fifteen minutes before you suggested to them that the "Arcona" steam ahead?

A. I believe I did say so.

Q. And that is the truth?

A. As near as I can remember.

Q. During the meantime the "Arcona" was not pulling? A. I believe she was not pulling.

(Testimony of J. R. Macaulay.)

Q. You know that?

A. I could see the line slack.

Q. And yet during that ten or fifteen minutes time, while the "Celtic Chief," to your knowledge, was moving seaward slowly, you did suggest to the German officers that the "Arcona" render her assistance?

Mr. WARREN.—Now, I object again, your Honor. That is the same question over and over again.

The COURT.—I think that's covered, Mr. Olson.
[2692—1861]

Mr. OLSON.—If the Court please, the witness has varied it every time I have tried to hold him down to that point.

The COURT.—We will continue the matter until two o'clock.

Recess.

The COURT.—The objection is overruled.

Q. Answer the question, Captain Macaulay.

(Question read.)

A. I did as soon as possible.

Q. Did you during that ten or fifteen minutes?

A. It may have been about that time.

Q. Before you did, you mean? A. Before I did.

Q. Do you mean to say that it was impossible during those ten or fifteen minutes before you gave the suggestion or advice, to make a suggestion or give the advice?

A. I may have been otherwise engaged during those ten or fifteen minutes.

Q. Isn't it the fact, Captain, that the reason why

(Testimony of J. R. Macaulay.)

you didn't give any suggestion or advice was because the lights were fired off just as soon as the officers came on the poop and before the time had elapsed?

A. It is not a fact.

Q. Now, how long was it before the vessel was actually off the reef that these lights were fired, the signals to the "Arcona"?

A. I don't remember what period of time.

Q. Well, how long as far as you can remember now?

A. I have no idea of minutes or seconds.

Q. Well, all right then.

A. Oh, it was a few minutes.

Q. Now, Captain, you said that it was a half an hour, according to your best judgment and recollection, from the time that you first saw the vessel beginning to move until the "Celtic Chief" actually came off the reef. That is so, isn't it?

A. That is so. [2693—1862]

Q. It was five minutes, was it not, according to your best judgment and recollection, after you noticed this seaward motion of the "Celtic Chief" when the German cruiser officers came up on the poop? That is so, is it not?

A. Well, about that time that the vessel started and was eventually floated. There was a considerable hurrying-scurrying around there.

Q. But you have testified, have you not, that it was about five minutes after you first noticed this seaward motion of the "Celtic Chief" that you noticed the German cruiser officers on the poop deck?

A. Everything that I have testified in this court

(Testimony of J. R. Macaulay.)

I am willing to stand by and I believe it to be the truth.

Q. Then it is according to your best knowledge and belief and your best judgment and recollection that it was five minutes about, after you noticed the first seaward motion of the "Celtic Chief" before the German officers came on the poop, you having so testified before.

Mr. WARREN.—I don't remember that it was five minutes.

The COURT.—I allow the question.

Q. Answer the question, Captain Macaulay.

Mr. WARREN.—I move that your Honor reconsider that ruling and allow me to be heard.

Mr. OLSON.—I withdraw the question. You did testify, did you not, Captain Macaulay, that it was about five minutes from the time that you first noticed a seaward motion of the "Celtic Chief" to the time that the "Arcona" officers came up on the poop?

A. To the best of my recollection I have tried to explain to the Court that I have taken no note of time at all during the time I was on board of the "Celtic Chief." I testified that it was a continuous day and a continuous night.

Mr. OLSON.—Now, if the Court please, I wish to interrupt the witness' answer because it is not responsive to my question. [2594—1863]

The COURT.—The captain has explained that and I understand that he didn't take notice of the time. Captain Macaulay, will you answer the question again, please, leaving out the explanation about

(Testimony of J. R. Macaulay.)

your not taking note of the time?

(Question read.)

Q. Did you so testify?

A. I might and I might not.

Q. Now, then, Captain Macaulay, you have repeated time and time again that the testimony that you have given is the truth to the best of your knowledge and belief. Now, then if you testified before the noon hour that it was about five minutes after you first noticed a seaward motion of the "Celtic Chief" that the "Arcona" officers came up on the poop, then that is the truth?

A. If I have so testified, I testified to the truth to the best of my knowledge and belief.

Q. On that point?

A. On that point and every other point.

Q. Now, then, you have stated, Captain Macaulay, that it was about ten or fifteen minutes after the German officers came on the poop when you, for the first time, suggested or advised the German officers that the "Arcona" steam ahead? That is correct, isn't it?

Mr. WARREN.—I admit it's correct your Honor.

Mr. OLSON.—Answer the question, Captain.

Mr. WARREN.—It's repetitious, your Honor.

The COURT.—I allow the question.

Q. Now, answer the question, Captain. Isn't that the way that you have testified, that it was about ten or fifteen minutes?

Mr. WARREN.—Now, your Honor, simply because this is cross-examination you shouldn't open the doors as wide—

(Testimony of J. R. Macaulay.)

The COURT.—I've ruled this time.

Mr. WARREN.—I offer in the record, now, to admit the fact, your Honor, that the witness has testified to that several times. [2695—1864]

Mr. OLSON.—Your admission is in the record and I want the captain's testimony also on the point and the Court has already ruled that I may have it. Now, then, will you answer the question, Captain Macaulay? Did you not so testify?

A. To the best of my knowledge and belief it was about ten or fifteen minutes when I addressed the executive officer of the "Arcona" and asked him why he didn't steam ahead.

Q. All right. Now then—

A. Or something similar. The exact words may not be the same but to the best of my recollection that was the effect.

Q. And it was about that time, was it not, Captain Macaulay, that the signals were fired off, signals to the "Arcona"?

A. About that time, yes.

Q. As a matter of fact, you have testified, have you not, that it was at that time?

A. About that time.

Q. Well, was it five minutes more that time or what was it? Do you mean approximately at the exact time? A. About that time.

Q. When you say about do you mean that it's within a half hour or within a half a day?

A. I mean it is within a half an hour.

Q. Now, is it then anything less than a half an hour? A. Yes.

(Testimony of J. R. Macaulay.)

Q. How much less than a half an hour?

A. A few minutes.

Q. Twenty-five minutes?

A. I can't exactly say how many minutes.

Q. How long was it before you made that *suggest* that those lights went off?

A. I don't remember.

Q. Was it before you made that suggestion that the lights were fired off?

A. I don't remember whether it was before or afterwards.

Q. It may have been before as far as you remember? A. It may have been. [2696—1865]

Q. Now, then, Captain Macaulay, it was at least ten minutes after you made that suggestion to the "Celtic Chief" officers before the "Celtic Chief" came off the reef, was it not?

A. The "Celtic Chief" was going astern at that time.

Q. Was it not at least ten minutes from that time until the "Celtic Chief" was afloat for the first time?

A. I don't know.

Q. Haven't you testified that it was a half an hour from the time that you first noticed a seaward motion of the "Celtic Chief"?

A. I testified that it was from half an hour to three-quarters of an hour.

Q. Then it was at least ten minutes after you made this suggestion to the "Arcona" officer before the "Celtic Chief" was afloat? A. I can't say.

Q. Might it have been less than that?

A. I have no idea how long it was.

(Testimony of J. R. Macaulay.)

Q. May it have been as much as a half an hour afterwards? A. No, impossible.

Q. May it have been as much as twenty-five minutes after you made that suggestion? Answer the question. A. I've answered the question.

Q. Answer it again. A. I don't know.

Q. It may have been?

A. It may have been and it may not have been.

Q. But to the best of your recollection it may have been?

A. To the best of my recollection it may have been or it may not have been.

Q. All right. You don't know?

A. I don't know.

Q. That is the truth?

A. I have stated nothing else but the truth while I have been on the stand.

Mr. WARREN.—It's very absurd for counsel to keep on that question that long.

Mr. OLSON.—I withdraw the last question that I asked the [2697—1866] witness and put it in another way. According to your recollection and judgment, Captain Macaulay, can it be said with truth that the "Celtic Chief" was afloat at a moment or two after the firing off of those signals to the "Arcona"?

A. To the best of my knowledge and belief at the exact time of the firing of those signals from the signal-man of the "Arcona," the "Celtic Chief" was actually afloat.

Q. It was? A. Yes, sir.

Q. So that you did not make any suggestion to the

(Testimony of J. R. Macaulay.)

German cruiser officers that the "Arcona" steam ahead until the "Celtic Chief" was afloat?

A. I didn't consider it necessary at that time.

Q. Answer my question. Had you made any suggestion that the "Arcona" steam ahead or give any assistance until the "Celtic Chief" was afloat?

Mr. WARREN.—Object to the question, your Honor; he's just answered it that he did not consider it necessary.

The COURT.—I overrule the objection.

Q. Answer the question, Captain Macaulay.

A. What's the question?

(Question read.)

A. I believe I did.

Q. How long before she was afloat?

A. I have no recollection of time at all. I took no note of any time that I gave any advice to the executive officer of the "Arcona." There is only one instant when I looked at my watch and observed the time, that is when the ship was actually afloat and away out in the ocean. Now, there is another time that I took off my watch.

Q. I don't care anything about that.

A. I do. I wish to state what I am positive about.

Mr. OLSON.—I object to the witness volunteering testimony.

The COURT.—Captain Macaulay, in cross-examination and all [2698—1867] examination we've got to limit ourselves to the questions. Of course, when your attorney has his redirect you'll have full opportunity to explain more at length. Of course, I

(Testimony of J. R. Macaulay.)

understand perfectly, Captain Macaulay, your answer so far. I understand that perfectly, Captain Macaulay.

Q. Now, then, Captain Macaulay, if you gave advice to the executive officer of the German cruiser, or the suggestion, if you wish so to call it, that the "Arcona" steam ahead before the "Celtic Chief" came off and the signals to the "Arcona" were not given until the "Celtic Chief" was safe, there must have been a lapse of some time between those events, must there not? A. Surely!

Q. How much time had elapsed between the two?

A. A few minutes, I suppose.

Q. When you say a few minutes, do you mean as much as ten or fifteen minutes?

A. Somewhere about there.

Q. About ten or fifteen minutes?

A. Somewhere about there, I wouldn't say exactly to the minute, but it was a short period of time.

Q. Might it be as much as twenty minutes?

A. No, I don't think it possible for it to be so long.

Q. Might it be as little as five minutes?

A. No, more than five minutes.

Q. It's more than five minutes and less than twenty minutes? A. Yes, that is so.

Q. So that the suggestion that you made to the "Arcona" was made more than five minutes but less than twenty minutes before the signals were fired for the "Arcona"?

A. Well, I'm not positive about that.

Q. Well, you've so stated just now, haven't you?

(Testimony of J. R. Macaulay.)

A. Well, I have stated that it was five, ten, or fifteen minutes, but I'm not positive about that now. I want to explain to you as near as I can the situation at that time.

Mr. OLSON.—If the Court please, it would not be responsive [2699—1868] and I submit the witness has no right to volunteer testimony.

The COURT.—That's a matter that your attorney will bring out.

Q. Now, then, Captain Macaulay, when, however, you said it was more than five minutes but less than twenty, that was the best of your present judgment and recollection?

A. I thought so. I think so still that it was about that time.

Q. So that the giving of that suggestion and the firing off of those lights were not coincident when they happened within a few moments of each other?

A. They did happen near together.

Q. But not less than five minutes?

A. But not less than five minutes.

Q. But it was not coincident?

A. Well, they were pretty close together. The whole thing was done in a very short period of time.

Q. Then, according to that testimony, Captain Macaulay, the "Celtic Chief" must have been just about ready to slip off the reef into deep water when you made that suggest?

A. Oh, no, she had already slipped.

Q. Into deep water? A. Into deep water.

Q. Was she afloat?

(Testimony of J. R. Macaulay.)

A. Well, she had to travel a certain distance before she'd be afloat.

Q. Had she travelled forty feet yet?

A. Beg pardon?

Q. Had she travelled forty feet yet?

A. When she had travelled forty feet she was afloat.

Q. Well, had she done that by the time that you made that suggestion? A. I believe she had.

Q. So that she was afloat when you made that suggestion to the first officer of the "Arcona"?

A. I believe I made the suggestion before that.

Q. Then she hadn't travelled forty feet, had she, when you made that suggestion?

A. No, I don't believe she had. [2700—1869]

Q. About what time was it those lights were fired off with reference to the time that you went off from the poop deck to get a pin and helped get that shackle out of the chock?

A. About what time was it you say?

Q. With reference to that time about what time was it that you made the suggestion—with reference to the time that you went off of the poop to get a pin with which to attempt to get the shackle out of the chock? Before or after?

A. I went down to get—you mean the capstan bar. I didn't get a pin.

Q. All right, Captain. It was something with which to get the shackle out of the chock, whatever it was?

A. I went to get the capstan bar to pry the shackle

(Testimony of J. R. Macaulay.)

out of the chock afterwards.

Q. After you had made that suggestion?

A. Yes, afterwards.

Q. Had the lights already been fired by that time?

A. I believe they had.

Q. What was the first officer of the "Arcona" doing at the time you made that suggestion to him?

A. He was standing close alongside of me and holding conversation occasionally with the "Arcona" and also the signal-man.

Q. Didn't you say that he was, at that time, giving directions to the signal-man and that the signal-man at once fired off the lights? Didn't you so testify? A. I did.

Q. So that the firing of the lights followed pretty close upon making that suggestion?

A. I made no suggestion of firing the lights.

Q. Did you not make a suggestion that the "Arcona" steam ahead and wasn't it at that time that the "Arcona" officer directed the signal-man to fire the lights? A. The lights were fired at once.

Q. Immediately upon your making that suggestion to the first [2701—1870] officer?

A. What suggestion do you refer to?

Q. Have I referred to but one suggestion?

A. Yes, you have.

Q. Then the suggestion that you made that the "Arcona" steam ahead.

A. That suggestion was made after the lights were fired.

Q. That suggestion was made after the lights

(Testimony of J. R. Macaulay.)

were fired? A. After the lights were fired.

Q. Oh, I see. Not before the lights were fired?

A. To the best of my knowledge and belief it was afterwards.

Q. Afterwards. All right. Now, then, if the lights were fired before you made this suggestion that the "Arcona" steam ahead, will you kindly state how long before, as near as you now remember?

A. A short time.

Q. Before you made the suggestion that the "Arcona" steam ahead. A. What is that reference?

Q. How long before you made that suggestion was it that the lights were fired off as signals to the "Arcona"? A. A very few minutes.

Q. A few minutes? A. A few minutes.

Q. When you say a few minutes, do you mean as little as five minutes?

A. No, I wouldn't confine myself to five minutes.

Q. All right. Do you mean, Captain Macaulay, that it could be as much as twenty minutes before that suggestion was made? A. Less.

Q. Would it be as much as fifteen minutes before that suggestion was made? A. Less.

Q. Would it be as much as ten minutes?

A. It might be.

Q. About ten minutes?

A. Might be, more or less.

Q. Is ten minutes about the best of your recollection? [2702—1871]

A. I wouldn't like to confine myself to any minutes at all.

(Testimony of J. R. Macaulay.)

Q. What is your best judgment on that?

A. I would say a few minutes. I wouldn't confine myself to any number because if I did I would be testifying to something that I couldn't prove.

Q. You said it was less than twenty?

A. I did and I believe so still.

Q. And you believe it was less than fifteen?

A. I believe so still.

Q. Do you mean, then, it was less than ten?

A. That's coming pretty close to the mark.

Q. Was it less than fifteen?

A. Well, that is the same question.

Q. I want to find out.

A. You can't find out from me because I can't tell.

Q. And you said that it was probably more than five, did you not? A. I did.

Q. Now, Captain Macaulay, would you say that the floating, the actual floating of the "Celtic Chief" occurred, must have occurred between those two occasions, namely: the firing of those signal lights to the "Arcona" and this suggestion that you made that the "Arcona" steam ahead?

A. The floating of the "Celtic Chief" occurred about that time.

Q. About midway between those two occasions?

A. About that time.

Q. That's what you mean?

A. What two occasions do you refer to?

Q. The firing of the signals and the suggestion made by you that the "Arcona" steam ahead?

A. Yes, the floating did occur about that time.

(Testimony of J. R. Macaulay.)

Q. About midway between those two occasions?

A. About that.

Q. So that the firing of the signal lights occurred before the "Arcona" was floated. [2703—1872]

Mr. WARREN.—I object to the question as asked and answered.

The COURT.—I allow the question.

Q. Answer the question.

A. What is the question?

Q. So that the signal lights to the "Arcona" were fired before the actual flotation of the "Celtic Chief."

Mr. WARREN.—There's another thing I object to and that is the question being repeated when it is in the record and the Reporter could read it.

The WITNESS.—Am I allowed to answer the question?

The COURT.—Yes.

A. When those signal lights were fired, the "Celtic Chief" had considerable sternway at that time.

Q. But as far as you know was not actually afloat yet.

A. Well, if she had sternway she must have been afloat. Probably her fore-end would be touching the bottom but the rising tide at that time and the motion of the ship would cause me to believe that the ship was afloat.

Q. Then, Captain Macaulay, you having testified that it was about a half an hour from the time the "Celtic Chief" first began to move, according to your observation, until she came off and it was about

(Testimony of J. R. Macaulay.)

five minutes after you first noticed her final motion that the German cruiser officers came on board the "Celtic Chief" and on to the poop, then it is true, is it not, Captain Macaulay, that for about twenty-five minutes the German cruiser officers were on the poop and in your immediate vicinity and yet during the whole of those twenty-five minutes you never made a suggestion to that or any of them that the "Arcona" might begin to pull or that she steam forward?

Mr. WARREN.—I have to object to that question, first, that it has been asked and answered several times; second, that it contains a misstatement of the testimony of the witness.

Mr. OLSON.—I say at least twenty-five minutes. If that's not in my question I so qualify it.

The COURT.—I allow the question. [2704—1873]

Q. Answer the question.

A. What is the question?

(Question read.)

A. It is not true.

Q. Well, if you didn't make that suggestion until the ship was afloat how could you make it otherwise?

A. What's that?

Q. If you didn't make that suggestion until the "Celtic Chief" was already afloat, how were you able to make it otherwise?

A. When the "Celtic Chief" was afloat approaching the "Arcona" I advised the executive officer to steam ahead and his reply to me was, "We can't steam ahead; we are afraid that the lines will get in

(Testimony of J. R. Macaulay.)

our propellers." Then I suggested again that he heave away on his chain cable which they did.

Q. You've answered that several times. That is in the record several times. I didn't have to have it repeated. The point that I am after, Captain Macaulay, is this, that for twenty-five minutes, at least, after those officers came on the poop, the "Celtic Chief" was moving seaward but was not yet afloat, and during the whole of those twenty-five minutes before she was actually afloat you didn't once suggest to them or to any of them or advise them or any of them that the "Arcona" began to pull or steam ahead, before she was afloat. Isn't that the fact? A. It is not.

Q. All right. What is the fact in that respect?

A. The fact is that the German officers were not on board the "Celtic Chief" for the twenty-five minutes.

Q. They were not? A. No.

Q. How long after you first noticed that the "Celtic Chief" began to move seaward was it that they came on the poop? How long?

A. About five minutes or so or ten. Five or ten minutes. A short time after she started they were on the poop.

Q. How long was it after they came on the poop that the "Celtic [2705—1874] Chief" came off the reef?

A. About thirty-five minutes or half an hour or something like that.

Q. And during that thirty minutes or thirty-five minutes, you never once made the suggestion that you have mentioned?

A. I did make lots of suggestions.

(Testimony of J. R. Macaulay.)

Q. Did you make that suggestion that the "Arcona" steam ahead?

A. I made that suggestion. I asked the officer, "Why don't you steam ahead"? That was while we were coming astern.

Q. That was while you were coming astern?

A. I believe that *were* were afloat at that time.

Q. Now, I'm asking you whether you made that suggestion before she was afloat?

A. I forget making any such suggestion before she was afloat.

Q. If you don't now remember of having made any such suggestion before she was afloat and if she wasn't afloat until thirty or thirty-five minutes after the German officers came up on the poop, isn't it true that you didn't make any such suggestion during that thirty or thirty-five minutes?

A. No, it is not true.

Q. Well, did you make that suggestion before she was afloat?

A. They were not on her there before she was afloat. She had started when the officer came on board.

Q. She was afloat before they came on board?

A. I won't actually say.

Q. Did you say a few minutes ago that they came up on the poop about five or ten minutes after you first noticed her afloat? A. I say so still.

Q. And didn't you say it was about thirty or thirty-five minutes after that before she was actually afloat? A. About that time.

Q. During that thirty or thirty-five minutes, weren't the German cruiser officers on the poop?

(Testimony of J. R. Macaulay.)

A. The commander, the signal-man. The executive officer and the commander left. [2706—1875]

Q. Where did they go?

A. They went back to the ship.

Q. To the "Arcona"?

A. They went back to the "Arcona."

Q. Before the "Celtic Chief" was afloat?

A. About the time she floated.

Q. The signal-man had already given his signals?

A. He had fired his signals.

Q. About how long before that?

A. A very short time.

Q. Five or ten minutes, ten or fifteen?

A. Somewhere around there.

Q. Ten or fifteen?

A. Somewhere around there.

Q. So that the "Arcona" had been signaled to go ahead by these lights ten or fifteen minutes before she was afloat? A. Oh, no.

Q. Didn't you say that the signal-man was leaving at that time? A. It took him some time.

Q. I'm asking you about the time when she actually floated. Didn't you say that the signal-man was leaving about that time?

A. The vessel had not got sternway.

Q. Didn't you say that they left the "Celtic Chief" about the time that the "Celtic Chief" was first afloat? A. About that time.

Q. And it was ten or fifteen minutes before that time that the signals were fired? Didn't you so testify? Didn't you so testify?

Mr. WARREN.—Object to the question—already

(Testimony of J. R. Macaulay.)

asked and answered. I move to strike the second question.

Q. Are you yet ready to answer that question?

Mr. WARREN.—I have a motion before the Court. I would like to have a ruling.

The COURT.—I'll let the record stand just as it is.

Q. Answer the question, Captain.

A. What is the question?

(Question read.)

Q. That is, before the floating of the "Celtic Chief" when the [2707—1876] signal-man was leaving the "Celtic Chief."

A. The signals, to the best of my knowledge and belief, were fired shortly after the "Celtic Chief" had gotten sternway.

Q. And it took her half an hour, didn't it, or more, after she got sternway, before she was afloat—isn't that your testimony?

A. It took her, to the best of my knowledge and belief, over half an hour; about three-quarters of an hour before she was in deep water.

Q. Well, how long was it before she was actually afloat for the first time?

A. A very few minutes.

Q. Well, when you say a very few minutes—after she started going seaward? A. Yes.

Q. What do you mean by a very few minutes?

A. A very few number of minutes.

Q. What do you mean by a very few minutes? Twenty minutes, half an hour, forty-five minutes, an hour or two hours?

A. When I say minutes I mean less than an hour.

(Testimony of J. R. Macaulay.)

If it was an hour I would say about an hour. When I say minutes, I mean minutes.

Q. How much less than an hour before the "Celtic Chief" was actually afloat for the first time after she had a seaward motion?

A. A very few minutes.

Q. Now, let's see how many minutes you mean. Do you mean five minutes?

A. I believe that the "Celtic Chief" was actually afloat from ten to twenty minutes after she first started.

Q. And she first started, according to your observation, about five or ten minutes before the German cruiser officers came up on the poop?

A. To the best of my knowledge and belief she had started before the German officers came on board.

Q. Don't you know that to be the fact?

A. I didn't take note of the time they came on board.

Q. So they may have been aboard before she started to move [2708—1877] seaward?

A. I was standing on the poop, starboard side aft, and they would come aboard on the port side on the main deck. They may have been on the main deck for a few minutes. It takes some time to get to the poop, where I was placed, so they might have been on board a few minutes before I noticed.

Q. May they have been on the poop before you noticed that she was moving seaward?

A. They might have been on the poop. It is possible.

Q. It is possible. You would now remember,

(Testimony of J. R. Macaulay.)

wouldn't you, if they had been on the poop at that time?

A. Well, they might have been on the poop without my observing them.

Q. When did you observe them with reference to the time that the ship began to move seaward?

A. When they came over on the starboard side.

Q. Was that before or after the "Celtic Chief" began to move seaward?

A. She was at that time moving.

Q. Moving seaward? A. Yes.

Q. How long after she started moving seaward was it that you saw them for the first time on the poop?

Mr. WARREN.—I object to the question as asked and answered.

The COURT.—I allow the question.

Q. Answer the question, Captain.

A. When I first noticed them on the poop that is when the executive officer came over on the starboard side. That was shortly after the ship had actually started.

Q. When you say shortly, do you mean about five minutes? A. A few minutes.

Q. Do you mean about five minutes?

A. Well, I wouldn't confine myself to any number of minutes.

Q. May it have been as much as ten minutes?

A. It might have been.

Q. Might it have been as much as fifteen minutes?

[2709—1878]

A. No, I don't believe it was as much as fifteen minutes.

Q. All right. Now, then, weren't the signals fired

(Testimony of J. R. Macaulay.)

off immediately at that time?

A. The signal-man ran right up on top of the pilot-house and the officer addressed him in German and the signal-man fired those rockets immediately after the German officer had spoken to him.

Q. Was the signal-man already going up on the pilot-house at the time that you noticed the executive officer for the first time on the poop?

A. About that time.

Q. How long did it take him to go from the position where you first noticed the executive officer until he was up on the pilot-house?

A. Possibly two or three minutes.

Q. And he fired his signals off as soon as he got up there, did he?

A. No, he waited for the officer's orders.

Q. How soon did they come after he was on the pilot-house?

A. Almost directly after he got placed on the top of the pilot-house.

Q. So you would say that within two or three minutes after he was on the pilot-house he fired the signals? A. He did.

Q. Then, the signals were fired about ten minutes before the "Celtic Chief" first was afloat; is that not true? A. No, I can't say that it is.

Q. Well, were they fired before she was afloat for the first time?

Mr. WARREN.—Object to the question as asked and answered.

A. I understood that was your last question.

Q. No, I said about ten minutes before.

(Testimony of J. R. Macaulay.)

The COURT.—Objection overruled. Answer the question.

A. What is the question.

Q. The first question was, those signals were then, were they not, fired about ten minutes before the "Celtic Chief" [2710—1879] was first actually afloat. What was your answer to that?

Mr. OLSON.—Withdraw the question.

The COURT.—I'll hear the answer any way.

Mr. OLSON.—I submit it's a travesty on justice.

The COURT.—Repeat the last question, Mr. Soares.

Mr. WARREN.—I want to have that answer.

Mr. OLSON.—Then I ask to have the witness excluded from the courtroom.

The COURT.—I'm going to allow the question.

Mr. WARREN.—I'm entitled to know what is in the record.

The COURT.—Not in the middle of cross-examination.

Mr. WARREN.—Your Honor, I move that your Honor reconsider his last order.

Mr. OLSON.—Now, then, Captain Macaulay, will you kindly answer the question that the Reporter will now read to you, being my last question?

(Question read.)

Mr. WARREN.—Object to the question as asked and answered.

The COURT.—I allow the question.

Q. Answer the question, Captain.

A. The "Celtic Chief" at the time those rockets were fired had sternway on the ship and to the best of my knowledge and belief she was actually afloat.

(Testimony of J. R. Macaulay.)

Q. I see. How, then, Captain Macaulay, was it possible for the signal-man who fired those signals to have gotten down from the pilot-house down the side of the vessel so that he was leaving the vessel at the time that the "Celtic Chief" was first afloat?

Mr. WARREN.—I object to the question as an improper statement of the testimony.

The COURT.—I think that I should allow the question to the witness after having his mind brought down to certain different things.

Mr. WARREN.—If I could have a statement on the record, then, as to the idea of objections of this kind, could it [2711—1880] not be understood that my objection and the ruling will always be the same where it goes to what I consider improper statements of the testimony?

Q. Answer the question, Captain.

A. What was that last question?

(Question read.)

A. At that time the commander, after discovering that the ship was actually afloat, returned immediately with the signal-man in their own boat on board of the "Arcona."

Q. Didn't you testify, Captain Macaulay, that the signal-man was already leaving the "Arcona" at the time that the first, that the "Celtic Chief" first came afloat?

A. He left the "Arcona" directly after firing his rockets.

Q. And I'm asking you if you didn't testify that the signal-man was already leaving the "Celtic Chief" when the "Celtic Chief" first became afloat.

A. Well, he certainly wouldn't fire the signals be-

(Testimony of J. R. Macaulay.)

fore she was afloat.

Q. He wouldn't? Why not?

A. Because the instructions were to fire the first signal when the ship had a slow motion. The second instruction was to fire the second rocket when the ship had a rapid motion, and the third signal was to fire the third rocket or signal when the ship was actually afloat. Instead of those instructions he fired the whole business off in a bunch.

Q. Now, then, Captain Macaulay, answer my question. Did you not testify that the signal-man was already leaving the "Celtic Chief" when the "Celtic Chief" first became afloat? A. It was at that time.

Q. It was at that time that he was leaving?

A. At that time.

Q. Going over her side?

A. He went on top of the pilot-house and fired those rockets and went immediately into the boat and left the ship as soon as possible for the "Arcona."

Q. Answer my question. [2712—1881]

Mr. WARREN.—I submit the question is answered.

The COURT.—I rule it has not been answered.

Q. Answer my question, Captain Macaulay. Didn't you testify that the signal-man was actually leaving the "Celtic Chief" at the time that the "Celtic Chief" first became afloat?

A. About that time.

Q. Do you mean that he was already going over the side of the "Celtic Chief" at that time?

A. I mean that he went on the pilot-house and fired those rockets.

Q. I'm not asking you about that.

(Testimony of J. R. Macaulay.)

A. And then immediately went into his boat as soon as possible.

Q. I'm asking you about an entirely different thing. I'm asking you if you have not testified that the signal-man was already leaving the "Celtic Chief" at the time she first became afloat, and I understand you to say that it was about that time. Now, then, I'm asking you if he was already going over the side of the "Celtic Chief" when the "Celtic Chief" first became afloat?

A. No, I don't understand it that way.

Q. Well, how was it, then?

A. He went over the side immediately afterwards.

Q. After the "Celtic Chief" was afloat?

A. After the "Celtic Chief" was afloat.

Q. So that he and the commander, then, were getting into the boat? A. As soon as possible.

Q. Were getting to the boat? A. Yes.

Q. After the "Celtic Chief" had first become afloat?

Mr. WARREN.—Object to the question as asked and answered.

The COURT.—I'm not sure yet. I want to get the witness' definite statement. It's not quite certain to me. It may be certain to you. I allow the question.

A. What is the question?

(Question read.)

A. I say that the commander— [2713—1882]

The COURT.—In other words, Captain Macaulay, had the ship floated before they got into their boats to leave the ship? A. I believe she had.

(Testimony of J. R. Macaulay.)

Q. Did you see them going over the side of the boat, the "Celtic Chief," over the side of the "Celtic Chief"? A. I did not.

Q. Did you see the signal-man come down from the pilot-house preparatory to going over the side of the "Celtic Chief"? A. I did.

Q. You were looking forward at that time, then?

A. No, I was looking aft.

Q. How could you look aft and see him coming down from the pilot-house?

A. The pilot-house is about the middle of the poop.

Q. And it was there that he was coming down at that time?

A. Yes, he was coming down from the pilot-house.

Q. Were you forward of the pilot-house.

A. I was about the break of the poop at that time.

Q. Now, from that time when the commander and the signal-man left the poop to go over to the "Arcona," until the "Celtic Chief" was within fifty feet of the "Arcona," how much time had elapsed, approximately? A. A few minutes.

Q. How many minutes do you mean by a few minutes? More than ten or fifteen minutes? Would it be more than fifteen minutes? A. It might.

Q. Might it have been as much as twenty minutes?

A. It might be twenty minutes.

Q. Might it be twenty-five?

A. Well, I don't believe it would be as much as twenty-five minutes.

Q. But it might be as much as twenty?

A. It might be twenty, more or less.

Q. But do you think it was less than fifteen?

(Testimony of J. R. Macaulay.)

A. It didn't take a great many minutes for them to travel in their own boat from the "Celtic Chief" to the "Arcona."

Q. I'm asking how long it was after they went down the poop and got into their boat before the "Celtic Chief" had come within fifty feet of the "Arcona"?

A. It might have been in the neighborhood of fifteen minutes or so.

Q. Might it have been as much as twenty?

A. It might have been twenty.

Q. Might it have been twenty-five?

A. No, I don't think so.

Q. Do you think it was less than fifteen?

A. Well, it's a hard matter for me to—

Q. I want your best judgment.

A. —to say what time elapsed.

Q. I want your best judgment.

A. Well, I gave it to you as near as I can.

Q. Can't you state whether you think it is less than 100?

A. I gave you the number of minutes as well as I could.

Q. According to your best judgment, do you think it was less than fifteen minutes?

A. It might have been fifteen.

Q. Might it have been as little as ten?

Mr. WARREN.—I object to the question as asked and answered.

A. Well, it might have been twenty, it might have been ten or fifteen.

Q. I want your best judgment, Captain.

(Testimony of J. R. Macaulay.)

A. I'm giving my best judgment.

Q. According to your best judgment that is the nearest—you have undertaken to say within five minutes the time that elapsed between various events in a number of instances.

A. Yes, and I am ready and willing to tell as near as I can of all events that happened.

Q. Well, now, give us the nearest that you can come to.

A. Might have been fifteen or twenty minutes.
[2715—1884]

Q. That is about the time that you think it was?

A. It might have been more or less, a few minutes more or a few minutes less.

Q. I want to find out if it might have been as little as ten minutes.

A. I say about ten or fifteen minutes.

Q. Well, then, it might have been as little as ten minutes or it might have been a little more than twenty minutes? A. It might.

Q. That's as near as you can come to it?

A. That's as near as I can come to it.

Q. The "Mikahala," the "Helene," and the "Like-like" were all pulling seaward, were they not, as hard as they could, when the "Celtic Chief" was coming off? A. They were supposed to.

Q. Haven't you so testified?

A. To the best of my knowledge they were.

Q. Didn't they have a powerful strain on all their lines? A. They did.

Q. And you mean to say with those three vessels pulling seaward that it took as much as twenty min-

(Testimony of J. R. Macaulay.)

utes for the "Celtic Chief" to be taken from the point where she was to the "Arcona," a distance of more than five or six hundred feet?

A. The "Arcona" wasn't standing at that time; she was already moving seaward when the "Celtic Chief" came within fifty feet of her. She was heaving on her chain cable.

Q. Was she moving seaward? A. Yes, *is* was.

Q. How long had she been moving seaward at that time?

A. Shortly after the ship, the "Celtic Chief," started I asked the executive officer why didn't he steam ahead; he said he couldn't steam ahead on account of being afraid of getting the line in his propeller. "Well, heave away on your chain cable." And they hove away on it. [2716—1885]

Q. What was the effect of that upon the "Arcona"? A. She started ahead.

Q. She started ahead? A. Sure!

Q. Did her propellers begin to move? A. No.

Q. How far did she travel heaving in on her anchor-chain?

A. She kept heaving on her anchor-chain until she got to her anchor.

Q. That was two hundred or three hundred feet forward?

A. I don't know how much she had out.

Q. Do you think she had as much as a thousand feet out? A. I don't know.

Q. She might have had that much as far as you know? A. For all I know, she might.

Q. You saw the place where the anchor of the

(Testimony of J. R. Macaulay.)

"Arcona" was dropped? A. I saw the splash.

Q. Was that as much as a thousand feet ahead of the "Arcona" where her position was when she finally got into position?

A. It was considerable distance. I didn't take any particular notice of the distance in feet.

Q. No? You testified that it was about four hundred feet, as near as you could judge, ahead of the "Mikahala's" bow?

A. Yes, from the "Mikahala."

Q. And haven't you testified that the "Arcona" was lying at least, after she became attached to the "Celtic Chief," somewhat ahead of the "Mikahala"?

A. She was.

Q. How, then, could she have more than four hundred feet of chain out?

A. I didn't measure the distance.

Q. You say the anchor was laid about four hundred feet ahead of the bow of the "Mikahala"?

A. I told you that the best of my recollection was that the anchor was lying ahead of the "Mikahala" and a little to the seaward. [2717—1886]

Q. About four hundred feet ahead of it, didn't you say, according to your best judgment? Isn't that what you said?

A. I do believe that she did have four hundred feet of chain cable.

Q. Did she have more than that?

A. She might have a little more.

Q. As much as a thousand feet?

A. I'm not prepared to say.

Q. And yet you still say, do you, that her anchor

(Testimony of J. R. Macaulay.)

was laid about four hundred feet ahead of the "Mikahala"?

A. I'm prepared to say that her anchor was laid ahead of the "Mikahala," a little to the seaward.

Q. Didn't you testify that it was about four hundred feet ahead of the "Mikahala," according to your best judgment?

A. I might have so testified.

Q. Well, don't you know?

A. I forget a great many of the questions was asked me.

Q. Don't you know that it was ahead about four hundred feet?

A. In fact, I remember very few of them.

Q. Don't you know that the anchor of the "Arcona" was laid about four hundred feet ahead of the "Mikahala"?

A. I know that the anchor was laid ahead of the "Mikahala," a little to the southward and seaward of the "Mikahala."

Q. If you testified that the "Arcona" anchor, according to your best judgment, was ahead about four hundred feet, of the bow of the "Mikahala," that would be true?

A. If I had so testified it would be true.

Q. Now then, Captain—

A. That is, to the best of my knowledge and belief.

Q. Well, you have so testified and if that is true, Captain, the "Arcona" couldn't have travelled more than a couple of hundred feet before she was up to her anchor, could she?

A. If she had four hundred feet of chain she would have to [2718—1887] travel that distance before she came to her anchor.

(Testimony of J. R. Macaulay.)

Q. Wasn't she lying ahead of the "Mikahala" in the position she was attached to the "Celtic Chief"?

A. The fact of her lying ahead or astern of the "Mikahala" had nothing to do with it.

Q. I'm asking you wasn't she lying with her bow considerably ahead of the bow of the "Mikahala"?

A. I believe she was.

Q. I believe you said that it was possible that her stern was, if not wholly at least almost, in line with the bow of the "Mikahala"?

A. I don't remember testifying to that effect.

Q. If you said her stern was at least abreast of her beam—

A. Now, you're getting a little closer to the facts.

Q. Is that so?

A. I believe that's a little closer.

Q. Was her stern abreast of the "Mikahala's" stern? A. No, it was not.

Q. Was it forward of the "Mikahala's" stern?

A. It was.

Q. Was it as far forward as the beam of the "Mikahala"? A. It may have been.

Q. Well, don't you know?

MR. WARREN.—Now, I submit, your Honor, this thing has been gone into.

Q. Now, then, if the "Arcona" was lying with her stern abreast of the beam of the "Mikahala," doesn't that indicate how much—

THE COURT.—I allow the question.

Q. Answer the question, Captain.

A. As near as I can recollect, the stern of the "Arcona" was to the westward of the "Mikahala" and

(Testimony of J. R. Macaulay.)

might have been a little forward of her beam.

Q. Do you mean the stern of the "Arcona" might have been a little forward of the beam of the "Mikahala"? [2719—1888] A. I do.

Q. That is according to your best judgment and recollection now? A. At this time.

Q. If the "Mikahala's" anchor was laid four hundred feet ahead of the bow of the "Mikahala," doesn't it follow that by the time that the "Arcona" had travelled so far that her bow was alongside of the anchor, the "Arcona" hadn't travelled more than a couple of hundred feet? A. No.

Q. Well, how far had she travelled at that time?

A. The length of her chain cable.

Q. How much was that?

A. I don't know exactly.

Q. If you have testified that the anchor was laid four hundred feet ahead of the "Arcona" and the bow of the "Arcona" was lying ahead of the bow of the "Mikahala," doesn't it follow that the "Arcona" hadn't travelled more than a couple of hundred feet?

A. I don't believe it's on record that I gave any exact distance of chains or cables or hawsers or any other line that was connected with the "Celtic Chief."

Q. And you don't believe that you said it was about four hundred feet ahead of the bow of the "Mikahala" that the "Arcona" dropped her anchor?

A. I have no recollection of giving any exact distance of lines, cables, hawsers, or any lines connected with the "Celtic Chief" to any of the vessels.

Q. Please answer my question. Do you say that you don't think that you ever testified that the anchor

(Testimony of J. R. Macaulay.)

of the "Arcona" was laid about four hundred feet ahead of the bow of the "Mikahala"?

A. I do remember testifying to what I supposed the length of chain cable was.

Q. And how much was it that you supposed it was?

A. It might have been four hundred feet.

Q. Don't you know that?

A. It might have been more. It might have been less.

Q. It might have been less than four hundred feet?

A. Might. [2720—1889]

Q. How much less? A. I don't know.

Q. You don't know? A. No.

Q. Now, then, Captain, try to refresh your memory and kindly state what your judgment now is as to the approximate distance ahead of the bow of the "Mikahala" that that anchor was dropped.

A. Have I testified that it was four hundred feet according to my judgment from the bow of the "Arcona" to her anchor?

Q. That was not your testimony and I have not so stated. I have asked you if you say you don't think that you testified that the "Arcona" dropped her anchor four hundred feet ahead of the bow of the "Mikahala."

A. It's an utter impossibility for me to remember the questions that has been put to me in this Court.

Q. How far ahead of the "Mikahala" was it then, according to your best recollection and judgment, that the anchor of the "Arcona" was dropped? How far ahead of the "Mikahala's" bow?

A. If you noticed that diagram that I drew at that

(Testimony of J. R. Macaulay.)

particular time it will give us approximately the distance from the "Mikahala."

Q. Didn't you testify that that diagram was not drawn according to scale? A. I did so testify.

Q. I want your present judgment and recollection.

A. It will give us a fair idea of the distance from that anchor to the "Arcona" and I have a right, I think, to take that diagram as being true to the best of my knowledge and belief.

Q. I want you to testify now independently how far, according to your present judgment and recollection, the "Arcona's" anchor was laid ahead of the bow of the "Mikahala." Now, kindly answer the question without any further evasion.

A. To the best of my judgment and belief it must have been about four hundred feet or so from the anchor to the bow of the "Arcona."

Q. How much from the anchor where it was dropped off the "Arcona" in this second position to the bow of the "Mikahala"? [2721—1890]

A. Less than four hundred feet.

Q. How much less than four hundred feet do you think?

A. Might have been a hundred feet less.

Q. So you think it was about three hundred feet ahead of the bow of the "Mikahala" that the "Arcona" dropped her anchor the second time?

A. That may be so.

Q. That's your present judgment and recollection?

A. That is my present judgment.

Q. And you say you were standing on the poop deck of the "Celtic Chief" and looking over the bow

(Testimony of J. R. Macaulay.)

of the "Mikahala," you were able to see the splash from that anchor not more than three hundred feet ahead of the "Mikahala," the "Mikahala" standing eight or nine feet out of the water and you standing on the poop deck about nineteen feet above the water line? A. More than nineteen feet.

Q. How much more? A. Six.

Q. Twenty-five feet? A. Yes.

Q. Twenty-five feet above the water line?

A. Yes.

Q. Didn't you testify that you were standing about nineteen feet?

A. Not on the deck. I testified the deck was nineteen feet.

Q. And you still maintain that standing twenty-five feet above the water line, you were able to look over the "Mikahala" and see that splash of water not more than three hundred feet ahead of the "Mikahala"? A. Yes.

Q. Now, then, you say that your present judgment is that the "Arcona's" bow was about four hundred feet from its anchor as laid? A. About that.

Q. How do you explain that she could have that much chain out if its bow was lying ahead of the bow of the "Mikahala" and yet that anchor was not more than three hundred feet from the *the* bow of the "Mikahala?" Kindly explain that, if you can. [2722—1891]

A. The height from the surface of the sea to where I stood was about nineteen feet out of the water.

Q. So it was twenty-five feet?

A. I'm answering your question.

Q. All right, go on.

(Testimony of J. R. Macaulay.)

A. The length of my body is about six feet.

Q. Oh! A. Oh!

Q. It was down on the deck, then, that it was nineteen feet above the water line?

A. I told you from the deck where I was standing to the water's edge was nineteen feet. I didn't necessarily come down there to that height to look at that anchor. I was standing on my legs.

Q. Now, I asked you, Captain, if you didn't testify that the place where you were standing was nineteen feet above the water line and I understood you to say just a few minutes ago that it was six feet more than that. Now, did you mean that your eyes were on a plane six feet above the deck on which you were standing when you said that?

A. I said that the place where I was standing was nineteen feet about above the water's edge, which I say now. We take my height into consideration. From where I could see that line will make, that was six feet additional.

Q. And that's what you mean when you said six feet additional sometime ago?

A. That's what I meant, taking my own height into consideration.

Q. You don't mean that the deck of the poop was twenty-five feet above the water line?

A. No, I don't.

Mr. WARREN.—Object to that question as asked and answered. I move to strike.

The COURT.—It will not be stricken.

Q. Now, then, Captain Macaulay, answer the question which I asked you a few moments ago. How

(Testimony of J. R. Macaulay.)

do you explain that there could be four hundred feet of chain from the "Arcona's" bow to its anchor where it laid in the second position if the "Arcona" was [2723—1892] not more than three hundred feet from the "Mikahala's" bow and yet the "Arcona's" bow was lying considerably ahead of the bow of the "Mikahala"? Kindly explain that, if you can.

A. The distance of the anchor from the bow of the "Mikahala"—I refer to the "Arcona's" anchor—the distance from the anchor to the "Mikahala's" bow, I testified to the best of my knowledge and belief, was less than the distance from that anchor to the "Arcona's" bow.

Q. How much less?

A. Might have been a hundred feet less, might have been more. Might have been less than that but I should say about a hundred feet. And when she dropped her anchor, the "Arcona" I mean, dropped her anchor in that position, I testified that I could see the splash from the poop deck of the "Celtic Chief."

Q. Yes. A. A little over the "Mikahala's" bow.

Q. Yes.

A. As near as I can remember, the height of the "Mikahala's" bow at that particular time, I believe, was in the vicinity of ten feet above the sea.

Q. I see.

A. I was standing on the poop deck of the "Celtic Chief," nineteen feet about, above the level of the sea.

Q. Yes.

A. My own height added to that nineteen feet

(Testimony of J. R. Macaulay.)

would make about twenty-five feet.

Q. Yes.

A. From that angle where I was standing to the angle of the bow of the "Mikahala" on that line it would be possible from where I stood.

Q. Is that your full answer?

A. That is my answer.

Q. Now, then, kindly answer the question that I asked of you, explain that if the "Arcona's" anchor was dropped about three hundred feet ahead of the "Mikahala's" bow and there was, in your judgment, four hundred feet of chain from the anchor to the "Arcona's" bow, how do you explain that if the "Mikahala's" bow was only three hundred feet from the anchor of the "Arcona" and the "Mikahala's" bow [2724—1893] was nearer to the "Celtic Chief" than the bow of the "Arcona"—that is to say, the "Arcona's" bow was farther seaward than the bow of the "Mikahala"? How do you explain that there could be four hundred feet of chain from the "Arcona's" bow to that anchor?

A. I don't know the exact length of the chain from the "Arcona's" bow to the anchor but to the best of my knowledge and belief there must have been about four hundred feet. That's approximately.

Q. You remember testifying, do you not, that the "Mikahala" was about one hundred and fifty feet in length or possibly more?

A. I have no personal knowledge of the length of the "Mikahala."

Q. Isn't that about it?

A. One hundred and fifty?

(Testimony of J. R. Macaulay.)

Q. One hundred and fifty feet?

A. She might be more.

Q. Do you think she is a little bit more?

A. She may be.

Q. Well, don't you think so? A. I do.

Q. How much more?

A. Well, she might be twenty-five or fifty feet more.

Q. Somewhere between one hundred and fifty and two hundred and fifty feet in length?

A. Yes, somewhere around there.

Q. Was the "Arcona" longer than the "Mikahala"? A. She was.

Q. How much longer, do you think?

A. I have no idea.

Q. Fifty or sixty feet or a hundred?

A. She might have been a hundred.

Q. Do you think she was? A. Yes, I do.

Q. So that the "Arcona" was probably about 250 or 275 feet in length?

A. Oh, she must have been more.

Q. About 300 feet, do you think? A. Yes.

Q. Now, then, if she was about 300 feet in length and her stern [2725—1894] was about abreast of the beam of the "Mikahala," her bow would be over two hundred feet or about two hundred feet ahead of the bow of the "Mikahala," would it not?

A. It would.

Q. Now, then, how can you explain that in your judgment there was four hundred feet of chain from the bow of the "Arcona" to the anchor, if that anchor was not farther ahead than a hundred feet, that is,

(Testimony of J. R. Macaulay.)

farther ahead of the bow of the "Arcona" than a hundred feet?

A. I don't understand your question at all.

Q. If the anchor of the "Arcona" was three hundred feet ahead of the bow of the "Mikahala" and the bow of the "Arcona" was two hundred feet ahead of the bow of the "Mikahala," doesn't it follow that the anchor of the "Arcona" was only about a hundred feet ahead of the bow of the "Arcona"?

A. If the anchor of the "Arcona" was two hundred feet—

Q. Say three hundred feet ahead of the bow of the "Mikahala." A. Three hundred.

Q. Yes, and the bow of the "Arcona" was about two hundred feet ahead of the bow of the "Mikahala," doesn't it follow that the anchor of the "Arcona" would only be about a hundred feet from the bow of the "Arcona"?

Mr. WARREN.—I object to the question as unintelligible.

A. I don't understand it all.

Q. If, Captain, the "Mikahala" is lying to the westward or to the eastward—I should say if the "Arcona," not the "Mikahala," lying to the eastward—

A. Which is the bow or the stern of those vessels?

Q. If the anchor of the "Arcona" was laid three hundred feet ahead of the bow of the "Mikahala" and the bow of the "Arcona" is two hundred feet ahead of the bow of the "Mikahala," how do you make out that there was four hundred feet of chain from that anchor, the anchor of the "Arcona," to the

(Testimony of J. R. Macaulay.)

bow of the "Arcona"?

A. You've made a mistake about that chain-cable on the "Mikahala" first, I can say. [2726—1895]

Q. All right, what is the mistake?

A. I stated that I thought that there was three hundred feet of chain attached to the "Mikahala's" anchor or thereabouts.

Q. That's what you stated, was it?

A. Well, about that. Three hundred feet from the bow of the "Mikahala" to that anchor.

Q. To whose anchor? A. "Arcona's" anchor.

Q. Yes, that's right; that's what you testified.

A. Now, then, the "Arcona's" anchor was off in a southeasterly direction about four hundred feet, to the best of my knowledge and belief, so that would bring the "Arcona" anchor to the southward and a little to the eastward of the "Mikahala's" anchor.

Q. Was it so far, as a matter of fact, to eastward that it was lying almost at right angles to the bow of the "Arcona"?

A. It was, as near as I could judge from my situation. It was laying at an angle of at least twenty-two degrees, on the port side of the "Arcona."

Q. How many degrees?

A. About twenty-two or thereabouts. It might have been more.

Q. Then it would not be at right angles?

A. Not exactly.

Q. Do you know that an angle at right angles is ninety degrees? A. I do.

Q. Now, then, if it was lying at an angle at twenty-two degrees, it was not lying near one-fourth of right

(Testimony of J. R. Macaulay.)

angles. It was less than one-fourth of a right angle?

A. Less than a quarter.

Q. Less than a quarter of a right angle?

A. Yes.

Q. Then the anchor was not lying anywhere near right angles?

A. The both anchors were not lying the same.

Q. We are talking only about one anchor and that is the anchor of the "Arcona," and I'm asking you if that was lying almost at [2727—1896] right angles to the bow of the "Arcona"?

A. The "Arcona" anchor was laid with a bearing on her port bow, I should say, at least 22 degrees on her port bow, that is, in the direction to the southward and eastward away ahead and a little to the eastward of the "Mikahala."

Q. Now, then, Captain Macaulay, if that is so, will you kindly explain how that anchor could be only three hundred feet ahead of the bow of the "Mikahala" if the bow of the "Arcona" was about two hundred feet ahead of the bow of the "Mikahala"? Wouldn't it follow that the anchor was only two hundred feet ahead, that is, 200 feet eastward of the position of the bow of the "Arcona"?

A. It would be more than that.

Q. How much more?

A. The anchor of the "Mikahala" was somewhere in the neighborhood of three hundred feet or so to eastward of the "Mikahala."

Q. How far eastward was the anchor of the "Arcona"? How far eastward of the bow of the "Mikahala" was the anchor of the "Arcona"?

(Testimony of J. R. Macaulay.)

A. A very short distance further than the anchor of the "Mikahala."

Q. How much farther, do you think?

A. Well, I should say a hundred feet or so more or less.

Q. Well, then, it was more than three hundred feet eastward of the bow of the "Mikahala," wasn't it?

A. Yes, I believe that is so.

Q. Why, then, did you testify that in your opinion it was about 300 feet away from the bow of the "Mikahala"?

A. Well, I so testify still, about.

Q. And when you say about you mean within a hundred feet?

A. I mean it is impossible for me to tell you.

Q. Was it a distance of fifty or sixty feet away, a thousand feet away? A. That's absurd.

Q. When you said that the "Celtic Chief" moved in there between Tuesday morning and Wednesday morning about six feet, were you speaking in terms similar to that now used? Possibly fifty or sixty feet or a hundred feet? [2728—1897]

A. When I stated that the "Celtic Chief" had moved in six feet I had marks and bearings and I measured the distance pretty near. What was the right thing?

Q. It was about six feet? A. It was six feet.

Q. Exactly? A. Or thereabouts.

Q. Or thereabouts?

A. Yes. Now, we'll come down to knowledge. It was within a few inches one way or the other.

(Testimony of J. R. Macaulay.)

Q. And when you used the word "thereabouts" sometimes you mean a difference of fifty or sixty or a hundred feet and sometimes a few inches?

A. Circumstances alter cases in this as they do in anything else.

Q. Now, then, Captain Macaulay, let's direct our attention to this six feet. Will you state what bearings you had that you were able to determine this variation from? A. Yes.

Q. What were they?

A. They were lights in the channel leading to Honolulu harbor.

Q. Lights? How many lights?

A. There's quite a number of lights.

Q. All right, what were the lights that you used as your ranges? A. The channel beacon lights.

Q. How many were there?

A. There is a half a dozen.

Q. You used a half a dozen?

A. No, I only used two.

Q. Two? A. Yes.

Q. Which two were they?

A. They were the two outer lights and also a light at Waikiki.

Q. I see. How far was the first light away from the "Celtic Chief"?

A. About a quarter of a mile.

Q. How far was the second light away from the "Celtic Chief"?

A. Four hundred feet from the first light.

Q. How far was the light at Waikiki from the "Celtic Chief"? A. About three or four miles.

(Testimony of J. R. Macaulay.)

Q. I see. Now, then, Captain Macaulay, you mean to tell the Court, do you, that you could determine a variation of six feet [2729—1898] with three lights, one of them a quarter of a mile from the "Celtic Chief," the other four hundred feet, away and the third three or four miles away. A. I did.

Q. You think that's within the range of possibility, do you? A. I do.

Q. Just as you thought it was within the range of possibility that you could estimate or you could measure six feet by means of your dividers on that chart?

A. The chart had nothing to do with that.

Q. Didn't you think the ——— had taken a certain position? A. I did.

Q. And didn't you say you were able to estimate the distance by means of a chart and dividers?

A. I did not.

Q. You didn't mean to so testify?

A. I didn't so testify.

Q. You didn't mean to so testify?

Mr. WARREN.—I object to that, your Honor; asked and answered.

Mr. OLSON.—Withdraw the question. Didn't you tell the Court, Captain Macaulay, that you would be able to calculate the distance between the two points indicating the positions of the "Celtic Chief" respectively on Tuesday morning and Wednesday morning by other observations you had made on the chart, putting them on the scale of miles?

A. I did, with compass bearings.

Q. You testified that you could calculate the distance she had travelled? A. By compass bearings.

(Testimony of J. R. Macaulay.)

Q. Did you mean the Court to believe that you could estimate in that way that she had travelled six feet inshore. A. By that method.

Q. Yes.

A. No, I don't so understand. It was different bearings.

Q. Didn't you take those compass bearings on Tuesday morning? [2730—1899]

A. By the compass, yes.

Q. Didn't you use Diamond Head lighthouse as your object point? A. I didn't.

Q. And didn't you believe that there was a variation between the two.

Mr. WARREN.—If this is material, if the Court please—

The COURT.—The objection is overruled.

Q. Now I restate the question.

Mr. WARREN.—I object to the question being restated.

Mr. OLSON.—I've withdrawn it. Captain Macaulay, didn't you say that having taken your compass observation on Tuesday morning and Wednesday morning that you found that the two varied, that they were different? Didn't you so testify?

A. I testified that there was a difference, I believe.

Q. Now, then, Captain, if that is so, didn't you also testify that you could chart those observations on the ship's map and that you did so? Didn't you so testify? A. I did not.

Mr. WARREN.—Object to the question on the ground that it is not proper cross-examination and

(Testimony of J. R. Macaulay.)

nothing on direct on which to base it.

Q. Didn't you say, Captain Macaulay, that by plotting those two observations on the chart that you could by means of a chart and the dividers, putting the points of the dividers on the two points plotted on the chart, transfer the dividers so separated to the scale and thus determine the difference in feet between those two points?

Mr. WARREN.—I object to that question, your Honor, on the ground that it isn't proper cross-examination.

The COURT.—I allow the question.

Q. Answer the question, Captain.

A. What is the question?

(Question read.)

Mr. WARREN.—Those two points related to the two different compass points? [2731—1900]

The COURT.—Any two points.

A. No, I did not so testify as to feet.

Q. You did not.

Q. How much of an examination did you give to this wire line that was attached to the Miller anchor, the main wire line?

A. Ordinary, just the same as I did give to all the others.

Q. Now, then, you might be—you didn't give it any less examination, did you, than the examination of the wire that was first used by the "Arcona"?

A. Well, a brand new doesn't require such close examination as an old wire.

Q. Was the Miller wire an old or a brand new?

A. The wire was second-hand.

(Testimony of J. R. Macaulay.)

Q. It was an old wire? A. Old wire.

Q. Then you examined it, I assume, more than you did the "Arcona's" wire? A. No, just the same.

Q. Now, then, is it possible that you are equally mistaken concerning your examination of the Miller wire as you are about the size of it?

A. No, I am not mistaken.

Q. You are right about both of them?

A. I think so.

Q. So that if Captain Miller has testified that that was a two and one-quarter, you nevertheless adhere to your belief that it was a four-inch diameter wire?

A. It looked that to me.

Q. And if, as a matter of fact, it is testified in this case that the wire line used by the "Arcona," supplied by the "Arcona" herself, was in good condition, do you still adhere to your position that it was not?

A. From actual observation of that wire of the "Arcona," I could say it was a very rusty wire, but its condition as to tensile strength, that I have no knowledge of.

Q. You don't know whether it was as strong as the other wire or not, the other wire furnished by the "Celtic Chief"?

A. I know it was not. [2732—1901]

A. I know it was not as strong as the wire furnished by the "Celtic Chief."

Q. How do you know that if you do not know its tensile strength?

A. I have an idea of the tensile strength of a wire according to its diameter.

Q. What is your idea of the tensile strength of the

(Testimony of J. R. Macaulay.)

wire that was furnished by the "Celtic Chief" to the "Arcona"?

A. Which do you refer to, a working strain or a breaking strain?

Q. Which do you know? A. Either.

Q. All right; how much would be the breaking strain of the wire furnished by the "Celtic Chief" to the "Arcona"?

A. Will you permit me to use tables?

Q. I'm asking first what your idea is?

A. I believe that that wire furnished the "Arcona" by the "Celtic Chief" would break at a strain of about thirty tons.

Q. Thirty tons? A. About that.

Q. Now, what is the breaking strain of the wire, the other wire used by the "Arcona," according to your idea?

A. The breaking strain of that wire would be in the neighborhood of about fourteen tons.

Q. Fourteen tons? A. About that.

Q. Why so much difference between the two?

A. The difference in their diameter.

Q. How much was the difference in diameter between those two wires? A. About one inch.

Q. How much was the line furnished by the "Celtic Chief" in diameter?

A. Might have been one and three-quarters or two inches.

Q. One and three-quarters or two inches?

A. I didn't measure it.

Q. What, in your judgment, was the diameter of the other line, the line belonging to the "Arcona," used by her? A. About one inch or so.

(Testimony of J. R. Macaulay.)

Q. Then your judgment is that the other is a two-inch? [2733—1902]

A. One and three-quarters might possibly be all.

Q. Why didn't you say, then, that the difference in diameter was three-quarters of an inch instead of an inch?

Mr. WARREN.—He said about one inch.

A. I didn't say three-quarters of an inch; I said one and three-quarters of an inch.

Q. Didn't you say that you thought that the wire furnished by the "Celtic Chief" was an inch greater in diameter than the other one? A. Yes.

Q. If the other one was an inch and the "Celtic Chief" one was one and three-quarters, there was not a difference of an inch between the two?

A. I didn't measure those wires exactly.

Q. There wouldn't be an inch difference?

A. No.

Q. Only three-quarters of an inch?

A. About that.

Q. Is that what you think it was?

A. Somewhere about that.

Q. Now, then, did you observe them pretty carefully?

A. No, just casually. Looked at them casually like I did with all the other lines.

Q. But closely enough so you are pretty sure there was a difference between them?

A. There was that difference, I believe.

Q. If the testimony is that they were both one and one-quarter inch in diameter lines, what have you

(Testimony of J. R. Macaulay.)

got to say about that as to its truth or untruth?

A. If the lines were measured and found to be of that diameter I would naturally suppose that that was the exact diameter of each line.

Q. That is, in other words, if they were an inch and a quarter each, they were an inch and a quarter. That's what you mean to say? '

A. That is what I mean to say.

Q. That you regard as an answer to my question?
[2734—1903]

A. I think that is an answer to your question.

Q. And when you answer to the question that you are prepared to say that the testimony is not true if there is testimony in this case that those wires were both of the same size, each an inch and a quarter in diameter, are you prepared to say that that's incorrect? A. No, I am not.

Q. So you might be mistaken in thinking one was larger than the other?

A. It looked that way to me.

Q. I'm asking whether you might be mistaken?

A. I might be.

Q. Do you think if you had given them careful observation that you could have mistaken that three-quarters of an inch?

A. Mostly any man is liable to make a mistake of three-quarters of an inch in giving the size of a wire or any rope.

Q. Now, Captain Macaulay, did you observe that wire its whole length, the wire belonging to the "Arcona," that was used by her?

A. No, that was impossible for me to do.

(Testimony of J. R. Macaulay.)

Q. What part of it did you examine?

A. The part along the poop deck of the "Celtic Chief" more particularly than any other part.

Q. There was a part on the poop deck, was there?

A. Along over the poop deck of the "Celtic Chief" and where it was made fast and along towards the "Arcona." When it was out of the water after that I couldn't see no more of it.

Q. Did you say that a part of that line was on the poop deck? A. No.

Q. It was not, was it?

A. I observed it from the poop deck.

Q. Captain Macaulay, do you remember having some words with Captain Miller of hearing a conversation between Captain Miller and Captain Henry on Monday, the first day after the going aground of the "Celtic Chief"?

A. No, I didn't hear any conversation between Captain Henry and Captain Miller.

Q. Did you take part in any conversation with Captain Miller on [2735—1904] that day?

A. I don't remember ever taking any part in any conversation with Captain Miller.

Q. You know, do you not, that Captain Miller came out that day? A. He did.

Q. And you know he brought lighters out?

A. He did.

Q. But you didn't hear any conversation at all between him and Captain Henry that day?

A. No, I did not.

Q. Did you talk to Captain Henry at all that day?

A. I believe I did.

(Testimony of J. R. Macaulay.)

Q. You did? A. I believe so.

Q. Well, did he say anything to you about placing an anchor out to hold the "Celtic Chief" in position?

A. I don't recollect.

Q. Would you have remembered it if he had said anything of the kind?

A. Well, I might and I might not.

Q. Didn't you tell Mr. Warren on direct that neither was there any such conversation, and also, and if there had been such a conversation, you would have remembered?

A. I don't remember of any such conversation.

Q. And you would have remembered it pretty well if he had?

A. There's lots of things there, Mr. Olson, that did occur that at this time I can't remember. It might come to my memory later on but at the present time I don't remember of any conversation about an anchor on that particular day between Captain Henry and Captain Miller.

Q. Did you hear any conversation between Captain Henry and Captain Miller on Tuesday concerning an anchor? A. Yes, I believe I did.

Q. What time of the day?

A. Well, now, I can't remember the time of day but I recollect something about Captain Miller when he did come on board, when he returned to the ship Captain Henry asked him the question, "Why didn't you return? What was your delay?" and his excuse was that he had been trying to [2736—1905] get this anchor of his from somewhere around about the railroad and carry it over to the wharf and when he

(Testimony of J. R. Macaulay.)

got to the wharf he couldn't get through the gateway and had to cut the gateway and the police were after him and after everybody else, and he had that as an excuse why he didn't return to the ship with his lighter.

Q. Now, Captain Macaulay, don't you remember that it was on Tuesday evening that the "Makee" came out with that anchor and it was not until Wednesday morning that the anchor was attached to the "Celtic Chief"? A. I believe that's correct.

Q. Don't you remember that the "Mokolii" came alongside the "Celtic Chief" Tuesday evening and threw a heaving line aboard? A. Yes.

Q. And don't you remember that it was not until next morning that Captain Miller came on board the "Celtic Chief"? A. It was next morning.

Q. What did Captain Henry say about this anchor when Captain Miller said he had brought it out?

A. At what time?

Q. On Wednesday morning?

A. When he came on board?

Q. Yes.

A. Well, he had some private conversation with Captain Henry that I didn't hear, about this anchor.

Q. Didn't you testify that you were standing there and heard the conversation between the two?

Mr. WARREN.—I object, the witness hasn't finished his answer.

The COURT.—Captain Macaulay, had you finished your answer?

Q. Captain Macaulay, I didn't happen to be looking at you. Were you going to say something else?

(Testimony of J. R. Macaulay.)

A. That question, your Honor, requires quite an explanatory answer and if you will permit me I will answer that question to the best of my knowledge and belief of what I know concerning Captain Miller's conversation with Captain Henry in reference to that anchor.

The COURT.—Mr. Olson don't want what it was, as I understood it. He asked if there was any conversation.

Mr. OLSON.—That's it exactly. [2737—1906]

Mr. WARREN.—Your Honor overrules my objection.

The COURT.—Yes, I overrule the objection.

(Question read.)

A. I don't remember of so testifying.

Q. Where were you at the time that this conversation was going on between Captain Miller and Captain Henry?

Mr. WARREN.—What conversation?

Q. The conversation which you have testified to.

Mr. WARREN.—When?

Mr. OLSON.—Wednesday morning.

The WITNESS.—What is the question?

Q. Where were you?

A. I was on board the "Celtic Chief."

Q. How were you able to ascertain then that Captain Henry had said to Captain Miller, "Why didn't you come back?" and how do you know that Captain Miller stated the reason was because he was getting this anchor off—you were not within hearing distance of that conversation?

A. That particular conversation was made in,

(Testimony of J. R. Macaulay.)

within hearing of more people than myself.

Q. Well, where were you?

A. I was aboard of the "Celtic Chief."

Q. How near to Captain Miller and Captain Henry? A. A few feet.

Q. And a part of that conversation you didn't hear?

A. A part of that conversation was spoken very low. The conversation I heard every person on the poop deck of that ship heard.

Q. Now, then, go on and state what the conversation was that you heard.

A. Captain Henry asked Captain Miller why he did not return with his vessels to lighten the ship.

Q. Yes.

A. Captain Miller made an excuse, saying that he was employed getting this anchor from somewhere around the vicinity of the railroad wharf towards the channel wharf. When he arrived at the channel wharf he found that the anchor wouldn't go through the gateway and he had to cut away the gateway and was in trouble with the authorities for cutting away the gateway. That was the cause of his delay in not coming back.

Q. Did you hear anything else of the conversation?

A. At that time I don't recollect of hearing anything else.

Q. Didn't Captain Miller, in your hearing, state that he had the [2738—1907] anchor on the "James Makee" or that he had dropped it and didn't he want to know why they let go his heaving line the night before?

(Testimony of J. R. Macaulay.)

A. I didn't hear that to the best of my knowledge and belief.

Q. Didn't you hear Captain Henry tell Captain Miller that the reason why he had let go the heaving line was because the anchor was not in the right position? A. No.

Q. You didn't hear that? A. No.

Q. Did you hear any words, and heated words, between the two other than what you have stated?

A. None that I can remember.

Q. Did either of them appear to be angry?

A. Captain Henry was not at all pleased with the deal in Captain Miller's coming to the vessel.

Q. After Captain Miller had explained to Captain Henry, did he cool down?

A. He did, to a certain extent.

Q. And it was after that that the conversation took place that you didn't hear? A. Yes.

Q. Did Captain Miller at any time in your presence or within your hearing state that it was suicidal to lighter cargo from the "Celtic Chief" without having an anchor placed out to hold her?

A. I don't remember Captain Miller ever making such a remark to Captain Henry.

Q. What?

A. I don't remember Captain Miller ever making such a remark.

Q. Don't you think you would have heard it if he had made such a remark? A. I think so.

Q. Did you hear Captain Miller make this remark, that he would take his anchor and go back and Henry, the captain, would lose his certificate or he would see

(Testimony of J. R. Macaulay.)

to it that the captain lost it?

A. I don't remember hearing any such remark.

Q. If there had been any such remark would you have heard it? A. I think so. [2739—1908]

Monday, October 16, 1911.

Q. In regard to position, Captain, of the various towing steamers, which one do you think was in the greatest danger? A. Beg your pardon?

Q. Repeat the question, Mr. Soares.

(Question read.)

A. They were all about in the same danger.

Q. I see. The "Arcona" in as much danger as any of them? A. About the same.

Q. Do you remember just what steamers were attached to the "Celtic Chief" at the time the "Mikahala" began to take cargo from the "Celtic Chief"?

A. No, I don't remember.

Q. You remember, however, do you not, that the "Intrepid" still had its line attached?

A. I remember the "Intrepid" having her line attached after the "Mikahala" attached her line.

Q. Well, don't you know that the "Mikahala" began to take cargo from the "Celtic Chief" before the "Intrepid's" line was cut?

A. Well, I don't remember. I couldn't state positively when the "Mikahala" started to transfer the cargo.

Q. Well, it began, did it not, the day before the "Celtic Chief" came off?

A. Oh, yes, I believe so.

Q. Now, what other Inter-Island vessel took cargo from the "Celtic Chief"? A. The "Mikahala."

Q. Any other? A. I believe the "Helene."

(Testimony of J. R. Macaulay.)

Q. Now, I ask you this, Captain, as the "Celtic Chief" lay aground before she started to come off at all, she had a considerable depth of water at her bow, did she not? A. She did.

Q. How much about?

A. She had about sixteen feet at her bow.

Q. Sixteen feet at her bow? A. Sixteen feet.

Q. I believe you said on direct that the formation of the reef is such that there is a ledge several feet high, two or three feet high, that went a considerable way and then there would be another ledge that would go in again a [2740—1909] considerable way; is that right?

A. That's the exact position of that reef.

Q. About how far from the bow of the "Celtic Chief" was the nearest ledge, would you say?

A. Oh, it was quite a distance.

Q. How far do you think?

A. A few hundred feet.

Q. Several hundred feet? A. A few, yes.

Q. Well, then, Captain, there would have been no difficulty for a small boat rowing around the bow of the "Celtic Chief," would there, in sixteen feet of water?

A. Well, if it was smoother there would be no difficulty, if it is smooth.

Q. Would there be any more difficulty in rowing around the bow of the "Celtic Chief" whatever the weather might be than in rowing alongside the "Celtic Chief" on her starboard quarter, starboard side or either side?

A. I don't quite understand your question.

(Testimony of J. R. Macaulay.)

Q. Well, would there be any more difficulty for a shore boat to circle around the "Celtic Chief," not coming too near, staying off a hundred feet, say, from the side, a hundred feet ahead of her bow, in rowing around the "Celtic Chief" than going by on her port side? A. Around the stern?

Q. Yes.

A. There would be less under her bow.

Q. As a matter of fact, with the kind of a swell that was running there on Monday, Tuesday and Wednesday, would there have been any difficulty particularly for shore boats going around the bow of the "Celtic Chief" from one side to the other, staying clear fifty or sixty or a hundred feet?

A. There would be no difficulty going from the side of the "Celtic Chief" until you approached the bow; you would be going with the swell and with the current, but when you did cross the bow and pulled on the opposite side of the "Celtic Chief," then you would have a further distance against the swell and [2741—1910] current. That is, there would be more danger than if you had gone from your first point directly astern; you'd be increasing the danger by going around the bow.

Q. Now, which side—well, let me ask you this, Captain: if a shore boat, under the conditions prevailing Monday, Tuesday, or Wednesday, or during the nights of those days, were to have gone to the Diamond Head side of the "Celtic Chief," staying clear of her fifty or a hundred feet, and had proceeded fifty or sixty or a hundred feet in that way and then had gone across and gone around on the other side of the vessel, would there have been any difficulty, par-

(Testimony of J. R. Macaulay.)

ticular difficulty, except rowing against the swell and the *carring*, in coming back?

A. Well, you would increase the distance, but there would be no further difficulty.

Q. There would be no other difficulty than that?

A. Not that I know of.

Q. You are able to judge pretty well, aren't you?

A. I believe so.

Q. So that the boats of the "Mikahala" could have come around to the opposite side of the "Celtic Chief" and have taken cargo from that side with just as little danger and difficulty as they could have on the side that they did cargo except for the additional distance they would have to travel?

A. Well, there was another matter that was taken into consideration.

Q. What was that?

A. They were working cargo on the other side of the ship around the vessels, and if the "Mikahala's" boats had gone around the bow and approached her stern to take cargo on that side, why they would be detained a longer time.

Q. I'm not referring to a gain or loss of time in that respect. Assuming that there was a berth for them, the only consideration would be the additional distance they would have to go.

A. Yes, and the time lost. [2742—1911]

Q. The additional time and distance?

A. Time and distance.

Q. Now, Captain, as a matter of seamanship, it would be better, would it not, to sacrifice that additional time and distance rather than incurring the

(Testimony of J. R. Macaulay.)

greater risk or danger of operating on the side where the swell was the greatest, would it not?

A. I don't agree with you.

Mr. WARREN.—I object to that question. It seems to me that calls for a conclusion of the witness without stating facts on which a conclusion is to be based, your Honor.

Mr. OLSON.—Oh, well, I'll withdraw the question.

Q. The swell was running on the one side of the "Celtic Chief" more than the other, was it not?

A. Yes.

Q. Which side?

A. It was higher on the starboard side of the "Celtic Chief."

Q. That's where it got the swell, was it not?

A. On the starboard side, yes.

Q. And, therefore, the operation of the shore boats on the port side of the "Celtic Chief" was easier than on the starboard side, was it not?

A. Yes, I should consider the port side the lee side to a certain extent.

Q. Where would the swell begin to break in travelling in to the shore. First, you say there was sixteen feet at the bow of the "Celtic Chief." Where would the swell begin to break on the reef?

A. When?

Q. At any time?

A. The swell would begin to break at the first obstruction.

Q. Where would that be?

A. At the ledge of the reef.

(Testimony of J. R. Macaulay.)

Q. Practically astern?

A. At the stern of the "Celtic Chief," little further out.

Q. And there's where the action of the swell would be greatest?

A. That would be the first break.

Q. Until it reached the next ledge? [2743—1912]

A. Until it reached the next ledge?

Q. It would gradually diminish from that point until it reached the next ledge? A. It would.

Q. So that the sea would be running less high, the breakers would be less violent at the bow of the "Celtic Chief" than at her stern? A. It would.

Q. As a matter of fact, the difficulty of navigating with a shore boat diminished the farther it went until it came to the second ledge, wouldn't that be true?

A. That would be true.

Q. Could a shore boat have gone underneath the lines of the towing steamers, directly astern of the "Celtic Chief" with safety? A. No.

Q. It could not? A. No.

Q. That would not be possible at all.

A. Well, it would be possible but it would not be practicable.

Q. Well, did any of the boats attempt to do anything of that sort? A. I don't believe they did.

Q. Will you state how the boats that were taking cargo to the "Helene" reached the "Helene"? In other words, what course did they travel?

A. They travelled directly from the "Celtic Chief" to the "Helene." She was lying in a south-

(Testimony of J. R. Macaulay.)

west direction from the "Celtic Chief."

Q. Now, how did they get around the "Likelike"?

A. The "Likelike" was to the westward of the "Helene"?

Q. To the westward of the "Helene"?

A. To the westward.

Q. Well, how did the boats going to the "Likelike" reach her then? A. "Likelike"?

Q. Yes.

A. I think the boats from the "Likelike," they went from the "Celtic Chief" to the starboard side of the "Likelike," as near as I can remember.

Q. Well, how did they get around the "Helene"?

A. They didn't have to get around the "Helene."
[2744—1913]

Q. Well, as a matter of fact you first had the "Intrepid" and later the "Arcona" in one position nearest to what vessel, what boat? A. The "Helene."

Q. And next to that, what boat?

A. The "Likelike."

Q. Now, then, in order to reach the "Helene," wouldn't the shore boats leaving the "Celtic Chief" be obliged to go either beneath or over the lines of the "Helene" or of the "Likelike" in order to reach the "Helene"?

A. Well, the lines of the "Helene" was fast on the port quarter to the "Celtic Chief" and the line of the "Likelike" was fast on the port after chock to the "Celtic Chief" right at the break of the poop.

Q. That is the like of the "Likelike"?

A. The "Likelike."

Q. Yes.

(Testimony of J. R. Macaulay.)

A. Now, the "Likelike" boats went to the westward of their own line and I am not positive whether the "Helene" did transfer any cargo or not from the "Celtic Chief."

Q. You are not sure about that?

A. I am not sure about that.

Q. You are sure the "Likelike" did though?

A. Yes, I am sure the "Likelike" did.

Q. You saw the shore boats going to the starboard side of the "Likelike" and there putting their cargo on board the "Likelike"?

A. As near as I can remember I believe that is the way they arranged it.

Q. You saw them, didn't you? Isn't that what you said a little while ago?

A. I said the line of the "Helene" was fast on the port quarter of the "Celtic Chief" and that the line of the "Likelike" was fast on the port after chock right forward of the break of the poop of the "Celtic Chief" and I know that they did operate cargo on that side.

Q. Which one was farthest forward of those two points, the port forward chock or the after chock?

A. The "Likelike's" line was fast forward.
[2745—1914]

Q. The "Likelike's" line was fast forward?

A. Yes.

Q. That is the after chock which you say was just forward of the break of the poop?

A. Yes, that was the "Likelike's" line.

Q. That was farther forward than the port quarter chock? A. Oh, yes.

(Testimony of J. R. Macaulay.)

Q. How much farther forward?

A. Well, about forty feet or so.

Q. Now, where was it that the boats on that side of the "Celtic Chief" were receiving cargo, aft or forward of the chock through which the "Likelike's" line passed into the "Celtic Chief"?

A. They were receiving cargo out of the main hatch and out of the after hatch.

Q. Well, was that forward or aft of the chock through which the "Likelike's" line passed?

A. The after hatch was about right abreast of that chock and the main hatch forward of that chock.

Q. Now, then, whichever hatch they were receiving cargo from they were obliged, in order to reach the "Helene," to go underneath the "Likelike's" line or else go around the "Likelike"?

A. Yes, they would have to do either one thing or the other.

Q. Which did they do?

A. I really don't remember, but I would suppose that they would go under the "Likelike's" line at the after hatch.

Q. Was there any difficulty in doing that?

A. Not if there was a strain on the line; there would be if the line was slack.

Q. But there was a strain on the line?

A. There was a strain on the line.

Q. Don't you remember, Captain, that all of the boats, as a matter of fact, taking cargo on that side took cargo out to the "Helene" and not to the "Likelike"? [2746—1915]

A. I don't remember.

(Testimony of J. R. Macaulay.)

Q. It might have been so?

A. It might have been so.

Q. So that your recollection to which you testified a few moments ago, that it was the "Likelike" and not the "Helene," or rather the "Likelike" rather than the "Helene," which received cargo may have been mistaken?

A. I didn't pay particular attention to the steamer they delivered the cargo to. I know they were working on that side, both hatches, and they were working on the other side to the "Mokolii." I didn't pay any particular attention to what steamer they were carrying the cargo to.

Q. I refer you now, Captain, to the conversation between Captain Miller and Captain Henry—no, not Captain Miller—Captain Henry and the man in charge of the "Mokolii," when the "Mokolii" came up and threw this heaving line on board the "Celtic Chief." You stated, I believe, that there was some words between the "Mokolii" and Captain Henry. Will you state as nearly as you can what those words were?

A. Well, it's so long ago that it's almost an impossibility to remember what those words really were. I remember distinctly the "Mokolii" towing the "James Makee" out and throwing that heaving line over. I also remember that Captain Henry and Captain Haglund and myself, we were standing on the poop and when they did throw the heaving line over, Captain Henry took ahoid of the heaving line and was about to haul it in when I advised him not to. The captain of the "Mokolii" did request to make

(Testimony of J. R. Macaulay.)

the line fast. What the words were between Captain Henry and the captain of the "Mokolii" I can't recall to memory at this time.

Q. Do you know whether or not Captain Henry said anything about the anchor?

A. I believe there was something said about an anchor.

Q. Well, what was it?

A. In fact—well, I don't remember what the words were, but we understood, at least I understood, that the "Makee" had this anchor. [2747—1916]

Q. That's what the "Mokolii's" captain called out to the "Celtic Chief"?

A. I believe it was something in reference to that anchor.

Q. Well, did Captain Henry say that he didn't want any anchor? A. Well, I don't believe he did.

Q. You don't remember anything of that sort?

A. I don't remember.

Recess.

Q. You said something on direct testimony, Captain, about the "Mauna Kea's" leaving by reason of a mail contract that she had. Will you state whether or not you knew or know of your own knowledge of any such mail contract or is that simply based on what someone else has told you?

A. I know of my own knowledge and as manager of the gasoline schooner, that it was necessary to have an agreement, contract, whatever it was, with the United States to carry mail.

Q. Now, just a moment, Captain. Do you know

(Testimony of J. R. Macaulay.)

the terms of the contract that the Inter-Island Steamship Co. has with the United States with reference to the "Mauna Kea"? A. No, I do not.

Q. You don't know whether that contract was actually in existence on that day or not, of your own knowledge?

A. I know of my own knowledge that that contract is or was in existence at that time.

Q. Had you seen the contract? A. No.

Q. Then you couldn't know of your own knowledge? A. I know that they carried the mail.

Q. That's the only reason you have for stating that the "Mauna Kea" was under contract?

A. That is the reason.

Q. That is the only reason?

A. Well, my knowledge of the fact that they must have a contract or otherwise they couldn't carry the mail.

Q. And I say that is your only reason? [2748—1917] A. That is my only reason.

Q. You never saw any such contract?

A. I never saw any such contract.

Q. Whether or not the "Mauna Kea" was obliged to carry mail the day that she left, you don't know, do you?

A. I don't know of my own knowledge whether she was obliged to carry mail upon that special day or not.

Q. Have you ever been in the employ of the Inter-Island Steam Navigation Company? A. I have.

Q. How long ago was that?

A. Over twenty years ago.

(Testimony of J. R. Macaulay.)

Q. For the last twenty years you have not been in the employ of the Inter-Island Company? A. No.

Q. Do you think, Captain, that the amount of current and wave produced by the propellers of the towing steamers as they were towing on the "Celtic Chief" would have any tendency to throw the "Celtic Chief" farther ashore?

A. No, I believe they would not.

Q. Not enough of it?

A. Not enough of it, but I do say that I do believe that was, that the current caused by the propellers would have a tendency to clear away the sand *a* top coral under the bottom.

Q. So that if Captain Bray has testified that the current or wave produced by the propellers would have a considerable tendency toward throwing the "Celtic Chief" farther ashore, your opinion is directly contrary to that; is that right?

A. I believe the current created by the propellers—

Q. Can't you answer my question, Captain?

A. That's what I'm trying to do. I don't know anything about Captain Bray.

Q. I've told you what Captain Bray has testified and I'm asking you whether you agree or disagree with him. A. I don't agree with him.

Q. That's what I want to find out. Do you remember seeing Captain Bray come out to the "Celtic Chief" in the quarantine launch?

A. Yes, I remember that. [2749—1918]

Q. Do you remember what time of day he came?

A. He came in the forenoon.

(Testimony of J. R. Macaulay.)

Q. About what time?

A. That was after seven o'clock.

Q. After seven. Wasn't the "Celtic Chief" aground before he came out there? A. She was.

Q. Did you see the quarantine launch come out from the harbor that morning?

A. I believe I did see the quarantine launch coming by the channel.

Q. Where did it go when it first came out?

Mr. WARREN.—I think this is not proper cross-examination. I withdraw my objection.

A. What is the question?

Mr. WARREN.—I renew my objection and ask the Court to rule.

The COURT.—I allow the question.

A. As near as I can remember, the quarantine launch came out and approached the "Celtic Chief" on the port side and landed her doctor.

Q. Don't you know that the quarantine launch went out and went to two other vessels before she came to the "Celtic Chief"?

A. I don't remember.

Q. Then you didn't see it come out of the channel?

A. I did.

Q. And it came directly over to the "Celtic Chief"?

A. The next time I saw the launch was her coming out to the port side of the "Celtic Chief" and landing the doctor.

Q. How long after you first saw her coming out of the channel was that? A. A short while.

Q. Fifteen or twenty minutes?

(Testimony of J. R. Macaulay.)

A. I don't remember the exact time.

Q. Would it be as much as an hour or two?

A. It would be less than an hour, I believe.

Q. You aren't sure on that point, are you, Captain?

A. I'm not sure of the exact time from the time I saw her in the channel, coming out and the time I saw her alongside [2750—1919] the "Celtic Chief."

Q. And the launch might have been out and visited one or two other vessels in the meantime?

A. Might have been, for all I know.

Q. At any event, the "Celtic Chief" was already aground when the quarantine launch first came out of the channel that morning?

A. Yes, she surely was.

Mr. OLSON.—I think that's all.

Mr. WARREN.—At this time, your Honor, I would ask for a ruling upon the last question put to this witness on direct examination, it being remembered that the direct examination is open for the purpose of that ruling, and that will determine whether or not I have any further question unless your Honor wishes to keep it reserved further and let Mr. Weaver proceed in the same manner that Mr. Olson has and take that matter up later.

The COURT.—I will allow the question. The case I refer to is 95 U. S. which has been referred to already.

Mr. WARREN.—What is the case?

The COURT.—95 U. S. 298-9.

(Testimony of J. R. Macaulay.)

Redirect Examination of J. R. MACAULAY.

Mr. WARREN.—Q. The last question was this one, Captain. I will restate to you, Captain, the last question which was put to you on direct examination, namely: What, in your opinion, was the cause of the floating of the "Celtic Chief," stating upon what you base your opinion, including your own experience in salving vessels and maritime matters, in navigation, as well as your own knowledge of the facts.

Mr. OLSON.—My objection is, of course, renewed to this question and I understand the Court overrules the objection.

The COURT.—The objection is overruled.
[2751—1920]

A. To the best of my knowledge and belief, I consider that the salving of the "Celtic Chief" was due to the assistance rendered her by the Inter-Island Steam Navigation Co., in lightering the cargo and in towing the ship, also partly due to the tug "Intrepid" and Young Bros., gasolene launch in holding the ship in position until such time as the Inter-Island Steam Navigation Co. took hold, and I also believe that the salvage of the "Celtic Chief" was partly due to the Miller Salvage Co., whereby they lightered and laid a sea anchor with a powerful purchase and gave material aid in floating the vessel, and I also will state that I believe that by a rise in tide that the rise in tide greatly helped the floating of the "Celtic Chief," and all these combined were, to the best of my knowledge and belief, the cause directly to the rescue of the vessel and cargo.

(Testimony of J. R. Macaulay.)

Mr. OLSON.—And what?

A. And cargo.

Q. Have you fully stated in answering this last question, various facts upon which you have based your opinion as fully as you can?

A. I have stated in what I have just stated my full opinion of the cause or the causes which were the means of rescuing the “Celtic Chief” and her cargo.

Mr. OLSON.—No other cause contributed, as far as you know? No other factor?

A. Yes, there was another slight aid.

Q. State it.

A. The crew of the “Celtic Chief” helped in making hawsers fast on board; they helped in rigging gear for discharging the cargo. In that manner they assisted somewhat.

Q. Whose idea was it that the ship should be lightened?

A. No one in particular. We all agreed upon the method which we should pursue towards the rescuing of the vessel and her cargo. [2752—1921]

Q. Didn't you and Captain Henry confer together and decide that it would be a wise thing to have the vessel lightened?

A. We did confer on mostly all the processes that were undertaken.

Q. Haven't you testified that Captain Henry was directly in charge of all of the salvage operations?

A. I have testified that Captain Henry was in charge of his ship.

Q. Haven't you testified that he was also in charge of the salvage operations?

(Testimony of J. R. Macaulay.)

A. To a certain extent he was.

Q. Haven't you testified that Captain Miller was obliged to follow his directions because he was the captain of the ship in charge of everything in connection with her?

A. Captain Miller was ordered by the master of the "Celtic Chief" through the advice of Captain Haglund and myself to place the anchor in a different position to what he had first placed it in. I believe and I think if it had been left to Captain Henry's own idea that that anchor would not have been shifted.

Mr. OLSON.—Moved to strike that last statement as a conclusion of the witness.

I move to strike the whole answer on the ground it is not responsive.

The COURT.—The last part of the answer may be stricken. The last part is an answer in a way but he goes off on another point. I will allow the first part of the answer to stand. If you can give a direct answer to Mr. Olson's question you will do that. He asks in regard to the lightering, as I understand, was it not, Mr. Olson?

Mr. OLSON.—Yes, I asked before in regard to the lightering and whose idea it was and he says that it wasn't the idea of anyone in particular. Let's have the question.

The COURT.—I allow the motion, Mr. Olson. The whole answer is stricken. [2753—1922]

Mr. OLSON.—Let's have the question.

(Question read.)

A. I consider that Captain Miller and every other

(Testimony of J. R. Macaulay.)

person having connections with the "Celtic Chief" were directly under the orders of Captain Henry, the master of the ship.

Q. And you have so testified in reference to Captain Miller, haven't you?

A. Captain Miller and all the others.

Q. You have so testified with reference to Captain Miller, haven't you? A. I have.

Recess.

Q. And, as a matter of fact, Captain, it was in response to a direction of Captain Henry's, was it not, that the Miller Salvage Company's anchor was transferred from the position it was dropped in on Tuesday night to the position which it finally occupied? That's correct, is it not?

A. Yes, that is correct.

Q. It was Captain Henry, was it not, who ordered the "Intrepid" to cut loose, cut loose in order to permit the "Arcona" to take the position of the "Intrepid"? A. It was.

Mr. OLSON.—I think that's all.

Cross-examination of J. R. MACAULAY on Behalf
of Miller Salvage Co.

Mr. WEAVER.—Captain, what was the name of that part of the shackle which the Miller Salvage Co. had on this wire cable to the anchor which goes through around from this point?

A. That is the eye of the shackle.

Q. Is the eye the name that would describe what goes through that part? A. No.

Q. What is that called? A. The pin.

Q. The pin and the eye?

(Testimony of J. R. Macaulay.)

A. The pin goes through the eye. [2754—1923]

Q. Has not that pin a round hole at one end of it?

A. Yes.

Q. About how large was that pin where the hole was in diameter?

A. The hole where the pin went through from the shackle wasn't a perfectly round hole. Never is. It's a hole that is kind of oval-shaped.

Q. In the pin? A. In the shackle.

Q. In the shackle. You called—the shackle, is that the round part of the two arms through which the pin goes? A. That's the shackle.

Q. That's the shackle. I'm speaking of the pin. One end of that pin has a round hole in it, hasn't it?

A. Yes.

Q. You loosen the shackle by putting some lever in that hole and twisting it; is that what it's for?

A. The hole in the pin is for the key.

Q. With the key you twist the pin in the shackle?

A. The key is inserted into the shackle and it locks the pin in the shackle. That is the reason of the hole.

Q. That is one end. Is there not another end of this pin, a round hole through which you put a lever in order to screw up the pin in the shackle?

A. No, the other end of the pin comes with a head.

Q. What's that like? Describe it.

A. It's partly round. It's near towards the side by which it connects with the tackle.

Q. Now, how big around was that?

A. The pin?

Q. Yes, how big around was that pin at that head?

(Testimony of J. R. Macaulay.)

A. I don't know exactly. I didn't measure that pin.

Q. You can give us an idea how many inches.

A. Might have been an inch and a half in diameter.

Q. Would it extend an inch and a half beyond the arms of this shackle?

A. No, I don't believe it would. [2755—1924]

Q. About how much beyond, clear of the shackle?

A. There are different kinds of shackles.

Q. Tell us about this one.

A. I did not pay particular attention to this particular shackle.

Q. About two inches?

A. No, I don't believe it would be as much as two inches.

Q. Wasn't it as if made by a round bar about two inches in diameter and then bent?

A. I don't believe it would be two inches in diameter.

Q. About how much in diameter would it be?

A. About an inch and a half.

Q. Then at the end of these bars is it not rounded out so you put threads in them?

A. Some shackles are formed that way.

Q. This one, was this one made that way?

A. I don't know.

Q. How large an eye did this shackle have?

A. The size of the pin.

Q. What is the size of the pin?

A. About the same size of the shackle.

Q. About one inch and a half?

(Testimony of J. R. Macaulay.)

A. Inch and a half.

Q. Describe the two ends of the pin.

A. In this particular shackle?

Q. Yes, this particular shackle.

A. I don't know.

Q. Don't you know anything about how large it was.

A. When the shackle came on board it was dark I couldn't see it.

Q. It was what? A. It was dark.

Q. Could you see how far it extended out beyond the arms of the shackle?

A. No, I couldn't see that.

Q. Weren't you very close to this shackle?

A. I was right next to it. [2756—1925]

Q. Weren't you handling this shackle?

A. I was.

Q. Couldn't you tell from handling it and being close to it what the shape was?

A. Well, I drew a diagram of a shackle and I suppose it would be the same as that particular shackle.

Q. I show you a drawing on Libellant's Exhibit "F" and ask you if that drawing of a shackle represents the shape of this shackle which Miller had?

A. May not represent that particular shackle that Miller had but that was the shape of an ordinary shackle.

Q. Was this not the shape of an ordinary shackle?

A. About that.

Q. This pin that goes through, does that extend out beyond in this case?

A. I don't know. In some shackles it might.

(Testimony of J. R. Macaulay.)

Q. But this pin that you refer to comes right through and locks the large pin. A little pin goes through the large pin?

A. Through that small hole. There are some shackles where the pin goes outside.

Q. You don't know what this one did? A. No.

Q. Do you know whether this one had any pin extending on both sides of this bar?

A. That I don't know.

Q. Was this shackle made without any means of twisting it out or pulling it out, do you know?

A. That I don't know.

Q. You don't know? A. I don't know.

Q. How long did it take you to get this shackle through the chock at the stern of the "Celtic Chief" that night, Wednesday?

A. It took about ten minutes.

Q. And Captain Miller was working with you then? A. He was.

Q. What means did you use to get it through?
[2757—1926]

A. The main purchase was attached to the steam winch of the "Celtic Chief" and I was standing at the chock with a capstan bar prying the shackle through with a terrific strain on the main purchase. I must have closed the shackle in sufficiently to let it come through the chock.

Q. And that was how long before the ship came off?

A. The ship was coming astern at that time.

Q. How long before the ship finally came off was that? A. That was after the ship came off.

(Testimony of J. R. Macaulay.)

Q. After the ship came off? A. Yes.

Q. After she was afloat? A. She was afloat.

Q. And how far aft of this chock was the shackle when the Miller Salvage Co. first got their line taut?

A. It was about forty feet.

Q. Then from the time that the Miller Salvage Co. had taken up the slack and got their line taut, to the time the ship floated that shackle had moved forty feet? A. It had.

Q. What did Captain Miller do with you on the poop deck that night in regard to this shackle?

A. After the shackle came through the chock I told Captain Miller to stand by and unshackle and let the wire go overboard instead of having the whole paraphernalia go over the stern—blocks, gear, and all. So when the shackle got over the main deck, I hailed Captain Miller and told him to unshackle, knock the pin out, which he did. Then the wire went over the stern.

Q. The line was unshackled after the shackle had been forward on the main deck? A. Yes.

Q. What happened to that shackle when it went through the chock this last time?

A. I don't know. I never saw the shackle afterwards.

Q. You did see the shackle then on the main deck?

A. I saw the shackle coming towards the main deck.

Q. That was after the ship was afloat? [2758—1927]

A. That was after the ship was afloat.

Q. How high is this ledge of coral where the "Cel-

(Testimony of J. R. Macaulay.)

“Celtic Chief” stuck above the ledge just forward of it?

A. About four feet, approximately.

Q. And how far—does that second ledge, the one forward, extend out to another ledge?

A. I don't know any ledge to seaward of the one you have just mentioned.

Q. Is that the last one? A. I think it is.

Q. Then, from this point where the “Celtic Chief” struck seaward, is the bottom level or slightly inclined down? A. It inclines downward.

Q. And eight hundred feet away from the “Celtic Chief's” stern about what difference in depth do you expect to find or did you find?

A. Eight hundred feet astern of the “Celtic Chief” at that particular time would *you put* in about five fathoms of water.

Q. Now, suppose you go north, a little north of stern, say on the port quarter, is that intelligible to you, Captain? A. No, it isn't.

Q. Suppose she go to the port, port quarter, as you call it, of the “Celtic Chief,” about eight hundred feet away, would that same depth be reached.

A. In what direction?

Q. Isn't port quarter of the “Celtic Chief” and eight hundred feet away intelligible to you?

A. In what direction from the “Celtic Chief”?

Q. Six points. A. What direction?

Q. Six points from the port quarter.

A. It's not intelligible to me.

Q. It is the port quarter of the “Celtic Chief”; it's off to the left and aft.

A. It's the quarter on the left-hand side looking forward.

(Testimony of J. R. Macaulay.)

Q. Do you not point out direction by so many points toward the port or toward the starboard of the stern when you're looking toward a beach?

A. Not in that manner. [2759—1928]

Q. How do you?

A. If you wish to point in a direction you want to state whether it is north, south, east, or west, then your question will be intelligible.

Q. Now, Captain, isn't it a well-known nautical means of describing, so many points, say five points off to the port quarter of the stern of a vessel?

A. Yes, but—

Q. Now, then, take that and apply it to the "Celtic Chief," five or six points on the port quarter astern of the "Celtic Chief" and eight hundred feet away, about what would be the depth there? Would it be about the same as is this other depth, dead astern? A. No, I believe it wouldn't be so much.

Q. What would be the difference and in what way, deep or shallow? A. It would be shallow water.

Q. Why, what's the formation of the bottom there?

A. Because there is less water to the westward in that direction that you have just stated, on her port quarter, to the southwest I would take it that you intend.

Q. So you mean to the southwest there would be less water there than there would be directly south. Then can you give an idea about what the grade was from the bottom of the "Celtic Chief" running toward the stern? What was the grade in the bottom, so many feet to a thousand.

A. A grade of about one foot to the hundred.

Q. And that was about an even grade from the

(Testimony of J. R. Macaulay.)

ledge where the "Celtic Chief," the bottom of the ledge where the "Celtic Chief" was say out for a thousand feet?

A. Oh, no, that was a grade to the outer edge of the reef.

Q. Well, then, beyond the reef and seaward, what is the grade? A. It would be more abrupt.

Q. Can you give any idea of how much? Any data?

A. Well, it would be for a certain distance, it would be considerable more than one foot to a hundred, but then you come to the end of that plane and then there is another big drop into [2760—1929] deep water. In fact, as you go a little further off you get no soundings until you are off-sounded (?).

Q. Now, this first change is about how much in a hundred feet?

A. Well, I should say three or five feet to the hundred.

Q. And does it extend about parallel with this edge of this ledge that you speak of?

A. That grade will extend about half a mile from the outer edge of the reef.

Q. And the same grade extend parallel with the ledge that you speak of, doesn't it? A. Yes.

Q. Why was it not good practice for the Miller Salvage Co. to lay this anchor on Tuesday night at night-time?

A. Because I myself personally did not think it was good practice to have the Miller Salvage Co. lay an anchor astern of the "Celtic Chief" that we could not locate and know its exact position.

Q. When you were down in the cabin with Captain

(Testimony of J. R. Macaulay.)

Henry and Captain Miller, did you feel any motion of the vessel other than the usual motion that you had felt that whole day? Any motion of coming off?

A. No.

Q. While you were down there was that the occasion when the sandwiches were eaten? A. Yes.

Q. You were down there only once for any time, any appreciable length of time? Did you have any conversation with Captain Miller about whether or not you thought the vessel was coming off at that *that* time? A. I believe we did.

Q. What did you say?

A. Captain Miller whispered in my ear that he thought she was moving.

Q. What did you say?

A. I forget now what I did say.

Q. Anything more to that? A. No, nothing.

Q. Did you express any opinion whether or not the vessel was coming off at that time?

A. Well, I forget now whether I did or not.

Q. Did you say anything to the effect, "Oh, you sit still, the [2761—1930] vessel is coming off by and by; it won't come off now"?

A. I was positive that the vessel would come off at that time.

Q. You didn't say anything about it at that time?

A. I knew she was coming off.

Q. You knew it because Captain Miller told you?

A. Oh, I didn't take any advice from Captain Miller.

Q. Didn't he inform you? A. No.

Q. How did you know?

A. From my common horse sense.

(Testimony of J. R. Macaulay.)

Q. How did you exercise your horse sense?

A. Same as I had right through.

Q. What observation had you made?

A. Lots of them.

Q. What did you observe?

A. I just answered your question by telling you I knew she was coming. If I knew the ship's draught—

Q. You are not answering the question. Say how you know it—I mean at that time when you were in the cabin. What had you done to observe that the ship was coming off?

A. We had studied the ship's draught and loading and her water displacement. We had also obtained the time of high water and we also knew exactly the amount of water it would take to float the ship, so we could tell pretty near the time the ship would come off that night.

Q. So you knew what time was high water?

A. We did.

Q. What time?

A. It was high water between twelve and two.

Q. You knew closer than that?

A. That was close enough.

Q. Is two hours close enough? A. Yes.

Q. There is considerable difference in tide in two hours.

A. There is a considerable difference in the displacement of the ship in two hours.

Q. Two hours made a considerable difference if a tide is 1.7 feet, in low and high tide.

A. The difference in the tide [2762—1931]

(Testimony of J. R. Macaulay.)

and the difference in the lightering of the ship was the cause of us knowing that the ship was coming off.

Q. You knew that high tide was coming between 12 and 2 o'clock? A. Between 12 and 2 o'clock.

Q. You didn't know any closer than that?

A. At the time I didn't know exactly.

Q. How long before high tide would be good practice to begin to pull that vessel?

A. About ten o'clock.

Q. How long before high tide?

A. About four or five hours.

Q. Then you should begin to pull before five hours in good practice? A. Yes.

Q. Then it's wise to begin to pull within an hour of low tide? A. No.

Q. How long after low tide is it good practice to begin to pull?

A. After low tide? Well, it's within five hours of high tide?

Q. Isn't that a waste of power, Captain, pulling five hours before high tide?

A. No, I don't consider it so.

Q. Would not the swells which lifted the "Celtic Chief" at the time she was made fast to the Miller Salvage anchor aid the Miller Salvage cable that Wednesday night materially in assisting the vessel off the reef, in your opinion?

A. Yes, it would, very much so.

Q. Would it not, by lifting the vessel when it was in a fixed position, that is, assisting any loosening a vessel for its position? A. It would help it.

(Testimony of J. R. Macaulay.)

Q. What is the best means of holding a vessel upon that reef when the swell is greatest, that you know of? A. What?

Q. What is the best means of holding a vessel upon the reef when the swell is greatest, while she is being lifted by the swell?

A. To heave on the anchor.

Q. Provided it holds. A. Provided it holds.

Q. If the Miller Salvage Co. attempted to lay that anchor on [2763—1932] Wednesday morning eight hundred feet astern of the “Celtic Chief” and a little on the port quarter, would that have been a safe position to put the anchor?

A. It wouldn't have been a satisfactory position, not to the westward of the “Celtic Chief's” position.

Q. Would it have been safe so far as depth of water is concerned, eight hundred feet away?

A. If it had been laid eight hundred feet from the “Celtic Chief,” it would have been of great assistance.

Q. And suppose it was laid eight hundred feet from the “Celtic Chief” and a little to the port quarter of dead astern, a little to the port quarter and not astern? In other words, if they attempted to lay it at the same angle and got a line for a fact, eight hundred feet away, would that have been a safe place so far as depth of water is concerned.

A. It would have been an aid to the vessel, but it would not have been a proper place to lay the anchor.

Q. Would it have been *dangers* from the fact that the water was too shallow to lay it there?

A. Well, to the westward of the vessel there was

(Testimony of J. R. Macaulay.)

shallow water, lots of it, and a vessel, if she did float off with the aid of that anchor in that position, she would be liable to go, leave the reef to the westward.

Q. How would that occur, Captain?

A. That anchor and the current would send her to westward.

Q. When the "Celtic Chief" took up the first position, or rather when the Miller Salvage Company, the "James Makee," took up the first position on Wednesday morning, about how many points from a line dead astern of the "Celtic Chief" were there?

Mr. WARREN.—I object to that as not being a correct statement of the testimony, your Honor.
[2764—1933]

Mr. WEAVER.—Leave out the time, Captain. I withdraw the question. When the "James Makee" with the anchor took her first position, about how many points on the port side of the "Celtic Chief" was she, if you know?

A. She was bearing four or five points on the port quarter.

Q. Well, now if she were four or five points on the port quarter and about eight hundred feet away, would that have been a dangerous position with regard to the depth of the water?

A. Well, she wasn't eight hundred feet away.

Q. Now, I'm just assuming that she was.

A. If she was eight hundred feet away it would have been sufficient water to float the "Celtic Chief."

Q. And would it have been a safe place so far as holding her from going on the reef is concerned?

A. No, I believe not.

(Testimony of J. R. Macaulay.)

Q. What would be the difference?

A. The ship would drift over to the westward.

Q. Would that four or five points make a difference? A. Sure it would.

Q. Would it make enough difference to be appreciable? A. It certainly would.

Q. How do you account for the difference? What is the element of danger had by that position?

A. Any anchor to the westward of the "Celtic Chief's" position would incline the vessel to that direction and would be aided by the wind and current. Naturally, she would drift to the westward and as she drifted to the westward the water became less.

Q. Would there be an appreciable difference between the point dead astern, eight hundred feet astern, and four or five points to the port side, eight hundred feet astern? A. Oh, yes.

Q. What do you think would be the difference?

A. Probably two or three fathoms. [2765—1934]

Q. As much as that? A. Yes.

Q. When you speak of points, in nautical degrees, how many degrees of an arc of a circle does it take?

A. Eleven.

Q. Then four or five points, fifty degrees, something like that? A. Yes.

Q. During the half hour before the "Celtic Chief" moved off were the lines of the "Arcona" sagging in the water?

A. What do you mean by sagging in the water?

Q. Were they not emerged, submerged in the water, at least part?

A. Yes, towards the center, they were.

(Testimony of J. R. Macaulay.)

Q. About how much of the center if you can give a proportion?

A. From the "Celtic Chief" rail or deck would be fifty feet of wire out of the water and the same would come from the "Arcona" rail to the water, that would make a hundred feet out of the water. The balance would be, naturally, in the water.

Q. That was the condition during about the half hour to the time the "Celtic Chief" floated?

A. That was the condition of the line.

Q. How far does the—

Mr. WEAVER.—That's all.

Mr. OLSON.—I have one or two more questions.

Mr. OLSON.—How were you able to determine *to determine* at that time, the exact time of the tide and the exact height of the tide.

Mr. WARREN.—What tide do you mean?

Mr. OLSON.—The tide he has spoken of.

A. By obtaining the tide tables out of the evening paper.

Q. Did that give the height of the tide also?

A. Yes.

Q. Do you know what that's taken from, the table in the paper?

A. Taken from the Government survey offices in Honolulu. [2766—1935]

Q. Does that correspond with the tide table from the United States tables which are in evidence here of the Coast and Geodetic Survey?

A. That I don't know.

Q. Don't you know that the tables which have been placed in evidence are based on observations taken

(Testimony of J. R. Macaulay.)

here in Honolulu? A. I won't say.

Q. Did you not testify that those are exact?

A. I testified to the best of my memory that I didn't recognize it.

Q. Then if, as a matter of fact, that tide table is based upon observation taken by United States officials here in Honolulu, are you prepared to say—

A. I am still prepared to say that I don't acknowledge that as a table.

Q. And you do admit that tables from the United States are taken from observation? A. I do.

Q. If that table is taken from observation by the United States officials, as tide tables you are still prepared to say that they are not correct?

A. I am still prepared to say that I don't acknowledge it.

Q. Why don't you?

A. Because they are not signed.

Q. It is not based upon the fact that you can't accurately determine the tides here in Honolulu?

A. If an article is signed by a hydraulic engineer or surveyor, I take it for its face value.

Q. That's the reason you take them?

A. That's the reason.

Q. It wasn't because there are big gales in Honolulu *which* a difference in tides of such a character that they cannot be determined in advance?

A. I still maintain, as I did in my former testimony, that there are tides and gales and other causes.

Q. Which is the reason, because that tide table that we showed to you is not signed or was it because the table— [2767—1936]

(Testimony of J. R. Macaulay.)

A. This is one of the unsigned—

Q. Which is the reason, or are they both unsigned?

A. They are both unsigned.

Q. So, as a matter of fact, you couldn't determine in advance what the exact height of tide would be?

A. No, not in advance.

Q. So you couldn't know, as a matter of fact, that the tide would be high enough to float the "Celtic Chief," even though you knew the amount of lightering?

A. Look to the tide table, the tide would be from twelve to two o'clock. Now, I still maintain that with all the hydraulic engineers and keeper of tide that he does not know accurately the exact height tomorrow.

Q. And neither could he tell the height of the tide?

A. Not exactly.

Q. Now, how were you able to determine to such an exact degree that the "Celtic Chief" would float with a certain amount of lightering if you couldn't know in advance what the height of the tide would be?

A. I knew in advance that we would have more than the height necessary.

Q. How did you know that unless you had some table? A. By my own practical experience.

Q. Doesn't the tide vary? A. It does.

Q. Doesn't it vary appreciably?

A. Not very appreciably.

Q. How much?

A. The height of an average tide in the vicinity of Honolulu is eighteen.

(Testimony of J. R. Macaulay.)

Q. Doesn't it vary from that? A. Yes.

Q. How much at the extreme?

A. Three or four inches.

Q. And doesn't the time vary? A. The time?

Q. Yes. A. Yes, sure.

Q. How much?

A. Well, the tides vary about three-quarters of an hour. [2768—1937]

Q. And that's all? A. That's about all.

Q. So that to that extent, at any rate, with those variations noted, the tide tables as shown in the United States Coast and Geodetic Survey would be correct, wouldn't they, with those variations?

A. With those variations they would be very near correct.

Q. You didn't explain that, did you?

A. I don't believe the question was asked me before.

Q. You simply declared that those tide tables were not correct. A. I declare so still.

Q. And you know that with a certain amount of lightening that there would be a sufficient high tide sometime between twelve and two to float the "Celtic Chief"? A. I did.

Q. Now, Captain Macaulay, about what time of night was it that you were down in the cabin there eating sandwiches?

Mr. WARREN.—That is improper recross, your Honor.

The COURT.—I allow the question.

Q. Answer the question.

A. It was after ten o'clock.

(Testimony of J. R. Macaulay.)

Q. Was it before eleven?

A. Well, it was sometime after ten o'clock. I wouldn't be positive.

Q. Well, do you think it was before or after eleven?

A. I really forget the exact time, but I know that we had, we had hoisted the first red light at ten o'clock for the Inter-Island steamers to pull hard then. After they started to pull hard, the Miller Salvage Co. got a superior strain on their anchor purchase, then there was no more to do but wait for the rise in tide and about that time we went down below and had those sandwiches.

Q. Then, according to your best recollection, it would be somewhere between ten and eleven o'clock?

A. Somewhere around there.

Q. It would hardly be any later than eleven o'clock?

A. About there sometime. [2769—1938]

Q. It was while you were down there having that lunch that Captain Miller, you say, made this comment to you?

A. Yes, it was at that time.

Q. Did he say that the ship was coming now?

A. No, I don't believe he did.

Q. Was there—what was there that caused him to make a comment, a bump or some motion or some noise? A. Well, there was no motion.

Q. Was there some noise?

A. Oh, no noise that I could observe out of the ordinary.

Q. Captain Macaulay, now, aren't you—isn't it

(Testimony of J. R. Macaulay.)

the fact that it wasn't Captain Miller at all that made that comment but it was Captain Henry who remarked that he thought the ship was coming off?

A. No, I don't think so.

Q. Might have been? A. Might have been.

Q. You don't think so? A. I don't think so.

Q. But Captain Miller didn't say that the ship was coming?

A. Captain Miller, as near as I can remember, whispered in my ear. He said, "I believe she's moving or about to move."

Q. Why did he whisper in your ear?

A. I don't know why.

Q. Did Captain Henry hear that whispered conversation? A. No, I don't believe he did.

Q. Apparently tried to keep it from Captain Henry's ears?

A. I don't know what his ideas were, I'm sure.

Q. That was earlier than you expected the ship to come off, wasn't it?

A. I expected the ship to come off any time after ten o'clock that night.

Q. Any time? A. After ten o'clock, yes.

Q. What did you say when he made this whispered comment?

A. I don't remember what I did say. I didn't take much stock in it.

Q. Because you realized that she wasn't yet coming?

A. I knew she would come somewhere about midnight. I was pretty sure she would come about midnight. [2770—1939]

(Testimony of J. R. Macaulay.)

Q. You were sure that he was incorrect in his judgment that she was already coming?

A. Oh, no, I wouldn't say that; she might have been coming.

Q. Well, did you go out to investigate?

A. I went out directly afterwards.

Q. How long afterwards?

A. About five minutes or so, probably. Maybe ten.

Q. Well, you couldn't have regarded his observation as worth much if you waited ten minutes.

A. I didn't take very much stock in it.

Q. As a matter of fact, you thought it was not so?

A. Well, I wouldn't go that far, but—

Q. Do you mean to say—

A. I knew there was no great hurry about rushing on deck because Captain Miller told me so.

Q. Do you mean to say that even if you took some stock, even though there might be a little in what Captain Miller said, that you would have stayed there for five or ten minutes without going out to see?

A. Probably if I had taken very much stock in it I would have gone a little quicker, I suppose.

Q. Wouldn't you have gone immediately if you had taken any stock at all?

A. If I was positive that the ship was afloat I would have gone quicker.

Q. And that's all you'll say about the matter?

A. That's all.

Q. So, even if you did take some stock in what Captain Miller said, you would have stayed there

(Testimony of J. R. Macaulay.)

five or ten minutes more without going out there to see, and you wouldn't have moved from your seat unless you were sure? A. No, it isn't at all sure.

Q. If you had even taken any stock in what he said, wouldn't you have gone out on deck?

A. I might.

Q. Wouldn't you have done so? [2771—1940]

A. I believe I would.

Q. So you didn't take any stock in what he said?

A. Not very much.

Q. If you had taken any stock in it you say and believe you would have gone out on deck to see if there was in fact, anything in it? If that was so, Captain, then you couldn't have taken any stock in it?

A. Not very much.

Q. Then you did take some stock in it?

A. I may have.

Q. Well, if you did, Captain, wouldn't you have gone up on deck to see?

A. It all depends on the amount of stock.

Q. That's the closest you'll testify?

A. That is the closest I'll assume to testify without risk.

Q. State whether or not, according to your present recollection, you took any stock whatever in what Captain Miller said. A. I certainly did.

Q. You did? A. Sure!

Q. Having taken some stock in what Captain Miller said there, are you prepared to say that you nevertheless stayed there five or ten minutes more without going out to see whether or not there was anything in it.

(Testimony of J. R. Macaulay.)

Mr. WARREN.—Object to the question; it has been asked and answered.

The COURT.—Overrule the objection.

Q. Answer the question, Captain?

A. What is the question?

(Question read.)

A. Yes, I did state there was five or ten minutes more.

Q. And what were you doing during that five or ten minutes?

A. I was talking with Captain Henry.

Q. What about? A. About the ship generally.

Q. You had already made the calculation?

A. We had.

Q. Which showed to you, which convinced you that a certain [2772—1941] amount of lightening more and she would float upon the tide coming in? She would have floated? A. Yes.

Q. Now, did you tell Captain Henry anything about this comment in which you did take some stock on the part of Captain Miller?

A. Yes, I believe I did.

Q. What did you tell him?

A. I said, "Let's go on deck and see what's doing."

Q. When? A. At that time.

Q. Immediately? A. Immediately.

Q. Did he demur?

A. We both went on deck together.

Q. That was about five or ten minutes after?

A. About.

Q. I'm asking if you said anything at the time.

(Testimony of J. R. Macaulay.)

A. Directly after.

Q. What did you say? A. Let's go on deck.

Q. How long after the time?

A. About five minutes or so.

Q. I want to know whether you said anything to him immediately afterwards? A. That was all.

Q. You refer to a lapse of five minutes between two events those making those events concurrent.

A. I didn't say it was five minutes?

Q. How long was that? A. Directly.

Q. By directly do you mean that you once rushed to Captain Henry and told him what Captain Miller had told you? A. No.

Q. What did you say?

A. I waited until Captain Miller went on deck, then I told Captain Henry, "Let's go on deck."

Q. How long after Captain Miller had spoken was it that Captain Miller went on deck?

A. About two or three minutes.

Q. What did you say?

A. I said, "Let's go on deck."

Q. Did you tell him anything about this statement of Captain [2773—1942] Miller's?

A. I didn't consider it necessary.

Q. I want to know whether or not you did or whether or not you didn't.

A. I can't remember exactly any particular thing that passed by years ago between Captain Henry and I.

Q. Didn't you say just a few minutes ago that you didn't tell Captain Henry anything about what Captain Miller had told you?

(Testimony of J. R. Macaulay.)

A. I said to Henry, "Henry, let's go on deck," and so that ended it.

Q. It was five or ten minutes after Captain Miller had spoken to you?

A. Might have been five minutes, might have been ten minutes; we didn't rush on deck.

Q. Before Captain Miller got into the cabin again?

A. That I don't know.

Q. Well, you were down there.

A. No, I do not believe he was.

Q. Isn't the fact, Captain Macaulay, that at one time during the period you were down in the cabin eating sandwiches, Captain Miller, having been in the cabin awhile, went out on deck and came back again? A. No, I don't remember that.

Q. You don't remember. Didn't you realize, Captain Macaulay, that it was pretty important that if the "Celtic Chief" was actually moving, someone ought to get the "Arcona" steaming up on her wires, pulling up on her wires and having all of the force possible operating?

A. I had nothing at all to do with the "Arcona" or any of the other vessels. I was there simply to do my share of it.

Q. Haven't you testified that you wanted to do everything in your power to get the "Celtic Chief" off? A. I did do everything in my power.

Q. Yet you waited for five or ten minutes before suggesting to Captain Henry what Captain Miller had told you. Do you know anything that the "Arcona" was doing? [2774—1943]

(Testimony of J. R. Macaulay.)

A. I don't know what they were doing on the "Arcona."

Q. As far as you know she was pulling?

A. I already supposed that the "Arcona" was to take the vessel after she was floated to an anchorage and I supposed she would be ready in order to take it.

Q. You didn't expect the "Arcona" to do any pulling? A. I did.

Q. Before the "Celtic Chief" came off?

A. Sure, that's what she was there for.

Q. When, Captain Miller had suggested to you or told you that he thought that the "Celtic Chief" was beginning to come, you having taken some stock in that, believing there might be something in it, although you knew the "Arcona" had not been doing anything up to that time, and you supposed that even during the period you were in the cabin that she was doing nothing, didn't it appeal to you as being something within your duty to go up on deck and get the signals made to the "Arcona"?

A. No, not my duty at all.

Q. Don't you think it was a wise thing to do?

A. No, I don't so consider it.

Q. You don't think it was a wise thing even if the "Celtic Chief" was moving? A. No.

Q. In other words, as far as you were concerned, you thought it was just as well not to have the "Arcona" doing anything?

A. I supposed that the "Arcona" was there to do her share.

Q. Will you kindly answer my question?

(Testimony of J. R. Macaulay.)

A. What is your question?

(Question read.)

A. I didn't think so at all.

Q. Didn't you—don't you know, Captain Macaulay, that the moment that the "Celtic Chief" began to move that her safety was insured that much more by the amount of additional power that was being exerted upon her? Don't you know that?

A. No, I don't know that.

Mr. WARREN.—One moment, Captain. I object to this as improper recross. [2775—1944]

The COURT.—I allow the question.

Q. You have answered that question, have you?

A. What was the question?

(Question read.)

Q. So, Captain Macaulay, you didn't and you don't now think that a vessel situated as the "Celtic Chief" was would be more apt to be floated if the "Arcona" had been pulling with all her might at the time that she began to come?

Mr. WARREN.—I object to the question as asked and answered and improper recross.

Mr. OLSON.—I'll withdraw my question and go on with something else. Now, Captain Macaulay, do you know what the length of the "Arcona's" wires were?

Mr. WARREN.—I object to that as improper recross, your Honor.

Mr. OLSON.—I withdraw my question. Did you state at all on direct examination that the "Arcona's" wires were seven or eight hundred feet long?

Mr. WARREN.—Same objection, your Honor, not

(Testimony of J. R. Macaulay.)

proper recross-examination.

The COURT.—I allow the question.

Q. Answer the question, Captain.

A. What was the question?

(Question read.)

A. No, I don't believe I did.

Q. Well, what did you say as to the length?

Mr. WARREN.—Same objection, your Honor.

Mr. OLSON.—All right, I'll ask the record be searched to find out what the length of that wire was. I ask to have the witness excluded from the courtroom during this argument.

Mr. WARREN.—I am not going to state any of the evidence and the request is improper and I object to it.

The COURT.—Very well. You will step into that room, Captain. (Indicating.)

(Witness resumes stand.)

The COURT.—I allow the question.

(Question read.)

A. To the best of my knowledge and belief, the length of the "Arcona's" line to the "Celtic Chief" was approximately about, [2776—1945] somewhere about five hundred feet.

Q. So that four hundred feet of that line was underneath the water and a hundred, that is, four hundred feet of each of those lines was under the water and about a hundred out of it?

A. About that.

Q. And that was what you meant, was it, when you testified previously that during the last half hour or so before the "Celtic Chief" came off, the

(Testimony of J. R. Macaulay.)

"Arcona's" lines were dipping somewhat in the middle into the water. That's what you meant, was it, that four hundred feet was underneath and a hundred out? A. About that.

Q. So it would be most of the line instead of a little? A. Most of the line.

Q. And you never meant to testify that only a small portion of the line was in the water?

A. I wouldn't call it a small portion.

Q. You never so testified at any time?

A. I testified that the middle of the line was under the water.

Q. But you did not testify that a small portion of the middle or a small portion of the line was in the water?

A. I don't remember of testifying to that effect.

Mr. OLSON.—That's all.

Redirect by Mr. WARREN.

Q. On cross-examination, Captain, you testified as to having seen the splash when the "Arcona's" anchor was dropped. How high was that splash as near as you could see from where you were?

A. Oh, I couldn't state the height of the splash. Just an ordinary splash of a heavy object dropped into the water. It might have been a few feet.

Q. Now, in answer to counsel's question of why could not the shore boats have gone around the bow of the "Celtic Chief" instead of going as they did to take their cargos to the [2777—1946] Inter-Island steamers, you said there was no difference appreciable, no difference until you approached the bow and then you got to the other side and you in-

(Testimony of J. R. Macaulay.)

creased the distance and did less and increased the danger. What increase of danger would there be in going around the bow?

Mr. OLSON.—Object to that as an improper statement of the testimony.

The COURT.—I allow the question.

A. What is the question?

(Question read.)

Q. What increase of danger would there be by the boat going around the bow as counsel said, 60 feet forward of the bow?

A. The difference in the danger would be increasing; the time that you would be outside the line of progress would be more.

Q. Danger of what?

A. Danger of the boat and the cargo. The shorter the distance from the larger vicinity of the reef, the less time it would take to get over that danger.

Mr. WARREN.—That's all.

Mr. OLSON.—Q. How were you able to determine what was the height of the splash from the "Arcona's" anchor?

Mr. WARREN.—Object to the question. The witness has answered that he didn't know the height. [2778—1947]

Tuesday, October 17, 1911.

Mr. WARREN.—Captain Piltz will be in port until Friday and for that reason we would like to take him off and put on this morning Captain Tullet, who will be here all of to-day.

[Testimony of Albert Tullet, for Libelants.]

Direct examination of ALBERT TULLET, a witness called on behalf of Libellants Inter-Island Steam Navigation Co. and Matson Navigation Co. and sworn.

Mr. WARREN.—Q. What is your age, Captain?

A. Forty-two.

Q. And your present occupation?

A. Master mariner.

Q. What was your employment in December, 1909?

A. Master mariner.

Q. In connection with what vessel?

A. "Mikahala."

Q. And what company?

A. Inter-Island Steam Navigation Co.

Q. What has been your experience at sea as to number of years?

A. Twenty-seven years.

Q. What kind of vessels?

A. Sail and steam.

Q. How long have you been a master mariner.

A. A little over fifteen years.

Q. And prior to that in what capacity did you serve?

A. Chief officer, second officer, third officer, and apprentice.

Q. Where have you spent this service?

A. All parts of the world.

Q. How much of it in the Hawaiian Islands?

A. Twenty years. [2779—1948]

Q. And how long have you been in the Inter-Island service?

A. Twenty years.

Q. What experience, if any, have you had in towing of vessels and otherwise handling them?

(Testimony of Albert Tullet.)

A. I've towed vessels in and out of port; I've towed them across the channels and handled vessels in tow under a good many circumstances. I've towed vessels twice from one Island to another, from Kauai to Oahu.

Q. Have you had any experience in the salvage of vessels? A. Yes, sir.

Q. State, if you remember, the first instance.

A. The first instance in the Hawaiian waters was the "Kilauea," then the ———, the "Sheridan," the "Chiyo Maru," the "Celtic Chief," and there are probably others I don't call to mind; also one of our Island vessels that I aided in salving, the "Kaala."

Q. Were each of these vessels ashore?

A. Yes, sir.

Q. And do you know personally of the operations at these different vessels you have just mentioned?

A. Yes, I was personally engaged in the operations.

Q. In all of the instances?

A. In all of these instances.

Q. Now, at the "Celtic Chief," you were in attendance at the operations of the "Celtic Chief" with the "Mikahala"?

A. I was in command of the "Mikahala."

Q. Beginning on the morning of December 6th?

A. Yes.

Q. And extending from that time until the "Celtic Chief" was floated? A. Yes, sir.

Q. And do you know the various positions of the vessels that were there at the time?

A. Approximately, yes.

(Testimony of Albert Tullet.)

Q. Directing your attention to Wednesday, December 8, that [2780—1949] being the day on the night of which she came off, I will ask you how many vessels were out there at the scene engaged in attempting to render assistance to the "Celtic Chief"?

A. Four.

Q. Will you name them, please?

A. "Likelike," "Helene," "Arcona," "Mikahala."

Q. Do you know the "Intrepid"?

A. The "Intrepid" was not there at that time.

Q. To what do you refer to now, Wednesday?

A. Wednesday night.

Q. Wednesday night? A. When she came off.

Q. Was she there at all on Wednesday?

A. Yes, she was there in the forenoon.

Q. I'd like to have you make a sketch, Captain, of the different, the position of the "Celtic Chief" and the several vessels as of Wednesday afternoon and Wednesday night.

A. Where do you want me to do it.

Q. You can come right down here, please.

Mr. OLSON.—I'd like to ask if this is for the purpose of bringing out some particular point.

Mr. WARREN.—I'm not intending to go into the whole case again with Captain Tullet but there is a special part of it that I wish to direct this witness' testimony to.

Will you kindly draw, Captain, the "Celtic Chief"? You have done so? A. I have.

Q. Will you mark that C. C.?

(Witness marks on drawing just made.)

(Testimony of Albert Tullet.)

Q. Will you now draw the relative positions of the "Mikahala"?

(Witness draws.)

Q. Will you mark that vessel, "Mikahala"?

(Witness marks on drawing just made.)

Q. How many lines did the "Mikahala" have, Captain, on Wednesday?

A. On Wednesday she had two. [2781—1950]

Q. Will you draw the two lines?

A. (Witness draws.) This is not being drawn with any idea to scale. This is being drawn as my memory serves me. For instance, the length of the ship and the length of this line may be altogether out.

Q. Showing just the relative positions?

A. Just the relative positions to show the position from the ship.

Q. Have you drawn two lines from the "Mikahala" to the "Celtic Chief"? A. Yes.

Q. What is this attached to one of them?

A. Simply an affair from one side of the vessel so as—

Q. Of the "Mikahala"?

A. The "Mikahala," to equalize the strain of the vessel.

Q. Now, draw the relative position of the "Arcona," please.

(Witness draws.)

Q. You have now drawn the position of the "Arcona"? A. Yes.

Q. Will you mark it "Arcona"?

A. "Arcona." (Witness marks on drawing.)

(Testimony of Albert Tullet.)

Q. How many lines did the "Arcona" have?

A. Two.

Q. Will you draw the two, please?

A. (Witness draws.) One went here one went up there.

Q. Will you mark that "Helene"?

(Witness marks.)

Q. And you have shown the line of the "Helene"?

A. Yes, sir.

Q. To the "Celtic Chief"? A. Yes.

Q. Now, the "Mikahala," please.

(Witness draws.)

Q. Will you mark that "Mikahala"? [2782—1951]

(Witness marks.)

Q. You have also shown the "Mikahala" line to the "Celtic Chief"? A. Yes, sir.

Q. Did the "Mikahala" have any anchor?

A. Yes, sir.

Q. Will you indicate where her anchor lay?

(Witness draws.)

Q. And connect that anchor with the "Celtic Chief," with the "Mikahala."

(Witness draws.)

Q. Do you know whether the "Arcona" had any anchor or anchors? A. Yes, I saw the anchor.

Q. Do you know where that anchor was?

A. Yes, sir.

Q. Will you indicate that on this drawing? This is with reference to Wednesday afternoon and evening? A. Yes.

(Witness draws.)

(Testimony of Albert Tullet.)

Q. You have now drawn the anchor of the "Arcona"? A. Yes.

Q. And the line connecting her anchor to the vessel? A. Yes, sir.

Q. Did she have any other anchors?

A. The "Arcona"?

Q. Yes. A. No, sir, not in the water.

Q. The "Helene" have any anchors?

A. The "Helene"? I couldn't see. I think she had two anchors on her. She had two anchors.

Mr. OLSON.—Move to strike the last answer of the witness on the ground that it appears it is hearsay.

The COURT.—Motion granted.

Q. The "Likelike"?

A. Yes, I saw her anchor down.

Q. Will you indicate where her anchor was?

(Witness draws.)

Mr. WARREN.—That is all as to the sketch, I think. I guess [2783—1952] I will, at this time, ask to have the sketch just made by the witness Tullet received in evidence.

The COURT.—It may be received.

(Sketch received in evidence and marked Libelee's Exhibit "H," Inter-Island and Matson Navigation Co., Captain Tullet's Testimony.)

Q. What was the object of the "Mikahala" anchor, Captain?

A. To keep the vessel to windward against the tide and swell; simply to maintain the position.

Q. What was done by the "Mikahala" Wednesday afternoon and evening, Captain, up to the time

(Testimony of Albert Tullet.)

the ship came off?

A. We were pulling on the hawsers attached to the "Celtic Chief."

Q. Will you describe her operations? Describe particularly just what the "Mikahala" did. How she pulled and as to her lines.

A. Her lines were taut at all times during the pulling operations; we simply reduced speed sufficient to relieve the strain during the times of low water and always at high water maintained full speed. We had, Wednesday night we hooked her on to full speed about eleven o'clock. I think about eleven o'clock, approximately. I couldn't say the exact minute, but the speed was never reduced more than a quarter simply to relieve the strain on the hawsers.

Q. How frequently did you observe the line of the "Mikahala" *particular* during Wednesday evening and night? A. Frequently, all the time.

Q. Did you observe the lines of the "Helene" and "Likelike"? A. Yes, sir.

Q. Wednesday night? A. Night, yes, sir.

Q. How were they?

A. There were sometimes during the night that I couldn't see them, of course, but at all times when there was light enough to view them, I saw them.

Q. At what time was it dark?

A. It was dark up to about, I think they threw on the electric [2784—1953] lights about eleven o'clock; after that time I could view them.

Q. From the time the electric light came on about eleven o'clock, did you—how frequently did you ob-

(Testimony of Albert Tullet.)

serve the lines of the "Helene" and "Likelike"?

A. Practically all the time. I was on my bridge all the time and they were in my view all the time.

Q. Describe their appearance and position during that last hour. A. Perfectly tight.

Q. What time did the "Arcona" come out, Captain? A. Did she come out?

Q. Yes.

A. About eleven o'clock in the forenoon.

Q. Of Wednesday? A. Wednesday, yes.

Q. Describe her operations. What did she do *on* first come out?

A. She came out and dropped her anchor almost directly ahead of the "Celtic Chief."

Q. I'd like to ask you, at this time, to indicate on the sketch you have just made, Libellant's Exhibit "H," Captain Tullet, the place where the "Arcona" dropped her anchor, as you've just stated.

A. Just mark a cross or draw an anchor?

Q. Draw an anchor.

A. I made a cross because I couldn't tell exactly how the anchor laid on the bottom.

Q. All right, make a cross.

A. Draw that "Arcona's" anchor.

Q. I'll ask you first, having dropped this anchor in that position what did she next do?

A. She began to swing around, the vessel began to swing around to her anchor and she got away down here close to the "Helene" and then she pulled her anchor up again.

Q. How did she do that?

A. She hove up that windlass.

(Testimony of Albert Tullet.)

Q. And what then did she do?

A. She steamed up in position here. [2785—1954]

Q. They picked up the anchor you have already drawn? A. Yes.

Q. Now, I'll ask you to put a figure one by the cross which indicates the position of the "Arcona's" anchor as first dropped and put a figure two by the anchor which you've just drawn indicating her second position.

(Witness marks.)

Q. That is correct, is it? A. Yes.

Q. Now, what did the "Arcona" then do?

A. She then run a small line to the "Celtic Chief."

Q. What kind of a line?

A. Well, it looked like first of all she run a manilla line to heave the vessel into position. Then she run a small one on judging from looking at it from my vessel, it was about a two-inch wire, and after she had that fast she steamed ahead on her engines and it broke in about the middle. I should judge she made six or seven revolutions and then broke this line.

Q. About what time of night or day was it that she broke that wire?

A. I should judge it was around about twelve o'clock—between twelve and one, perhaps. I couldn't state positively, what time it was.

Q. Do you know what was the condition of the tide at that time?

A. The tide was at high water.

Q. Now, when she dropped her anchor the second

(Testimony of Albert Tullet.)

time in what position was she headed?

A. After she got into position, do you mean?

Q. Now, first she broke one. She broke it.

A. When she broke it I should judge she was heading about east when she steamed up to drop her anchor.

Q. Then, having dropped it and swung back, how was she heading when she took up the position which you have indicated on this sketch?

A. As near as I could judge she would be heading about south by east; about south by east quarter. Perhaps she was heading a little bit to the eastward, [2786—1955] to the "Celtic Chief."

Q. As indicated by this sketch? A. Yes.

Q. When she took up the position indicated on this sketch, did she change her position in any way?

A. No, sir.

Q. During the operations? A. No, sir.

Q. Well, having broken the wire, what did she next do?

A. She ran two small lines and ran a big wire hawser and she spent quite a long time on that.

Q. How long?

A. I should judge about three hours. She made about three attempts and each time it got fouled off the bottom and they would break the line that they were heaving on board the ship and they finally gave it up and went out on the "Arcona" again.

Q. About what time in the afternoon?

A. I should judge about between three and four.

Q. Then you saw them run two wires?

A. They ran two small wires.

Q. Did you examine the wires yourself?

(Testimony of Albert Tullet.)

A. No, sir, I only know about them from my ship.

Q. About what time did they get those wires fast between the two vessels?

A. I should judge they got those wires fast a little after six o'clock, I think.

Q. And what—

A. Between six and seven. I don't remember the exact times. I didn't take any notice of the exact times. It was between six and seven.

Q. Having gotten those two lines fast, what did she then do?

A. She didn't do anything after that.

Q. What was the position of those two lines when they were so attached?

A. One was on the starboard side and one was on the port side.

Q. Of what?

A. Of the "Celtic Chief." One [2787—1956] ran over my line and went into the midship chock on the starboard side. That I could see distinctly. The reason I remember it so distinctly is because I had to send my chief officer to parcel it to keep it from chafing. I sent my chief officer to parcel the lines when this wire hawser was chafing them.

Q. Do you know the way they were attached to the "Celtic Chief"? Indicate their position as respects the water line.

A. The only one I could see from the "Celtic Chief" was the one on the starboard side that came from the midship chock along the side of the vessel over my line and then dropped down into the water.

Q. The other line you say you couldn't see at the "Celtic Chief."

(Testimony of Albert Tullet.)

Mr. OLSON.—I object—

A. I did not see the line on the port side of the “Celtic Chief.”

Q. Did you observe her lines at her own stern?

A. Yes, sir.

Q. What was their position there?

A. Their position there was very similar to the line that I saw leading from the “Celtic Chief.” It dropped down from the stern in the water probably about forty or fifty feet from the ship.

Q. At the “Arcona” end? A. Yes, sir.

Q. Approximately how much of the line out at the “Celtic Chief” end, the one that you saw?

A. I should say after it crossed my line where it dropped into the water there wouldn’t be more than thirty feet in view. Thirty feet of the line in view.

Q. How frequently did you observe the “Arcona’s” lines that evening after the two were made fast?

A. I observed them when the electric light came on. They were in the same position then as they were before.

Q. At which end?

A. The “Celtic Chief” end. [2788—1957]

Q. Could you observe them at the “Arcona” end?

A. No, sir.

Q. And after the light came on did you, how frequently did you observe them?

A. All the time I was on my bridge; all the time that night.

Q. Was there, at any time, any change in the position of those lines at either end? A. No, sir.

(Testimony of Albert Tullet.)

Q. Did you observe them at the "Arcona" end after the light came on? A. No, sir, I did not.

Q. How many lines, after the light came on, how many "Arcona" lines could you see at the "Celtic Chief" end?

A. One; only the one on the starboard side.

Q. Do you know whether or not, at any time, during that evening, the lines of the "Arcona" were taut?

Mr. OLSON.—Just a moment. I object on the ground it appears the witness is not qualified to answer.

Mr. WARREN.—I now request your Honor to ask the witness to be excused to allow me to respond to the Court.

The COURT.—You may withdraw, Captain Tullet, in the room across the way.

(Witness leaves stand.)

Mr. OLSON.—I wish now to add to the objection that it's leading. I wish to add further it appearing from counsel's statement that he wishes to show by this witness that these lines were not taut because the propellers were not moving, therefore it's calling for a conclusion of the witness.

The COURT.—I think it does suggest the answer to the question. On that ground it is objectionable; I sustain the objection.

(Witness resumes stand.)

Q. Captain, you having described the position of the "Arcona" lines, up to between six and seven o'clock in the evening when she got them both attached to the ship and later observed the starboard,

(Testimony of Albert Tullet.)

the line to the starboard quarter after the searchlight went on in the same position as it was previously [2789—1958] I will ask you if you know whether or not during the entire evening, that is, including the hour when it was dark, if you know whether or not there was any change at all in the position of either of the “Arcona’s” lines.

Mr. OLSON.—I object to the question on the ground that it already appears that this witness does not know and cannot know the condition of those lines.

The COURT.—The objection is overruled.

Mr. OLSON.—I ask that the witness be instructed to confine his answer to yes or no.

The COURT.—I don’t think we can assume the witness is going to; I’ll not interfere with the witness’ answer.

A. There was no change in the position.

Mr. OLSON.—I move to strike on the ground it is not responsive.

The COURT.—It simply saves a step, Mr. Olson,

Mr. OLSON.—I move to strike then further on the ground that it appears that the witness is not qualified to answer. Does your Honor deny the motion?

The COURT.—I do, yes.

Q. How do you know, Captain, that there was no change at all in those lines?

A. Because had there been any change the position of the “Arcona” certainly would have changed with it.

Q. Why?

(Testimony of Albert Tullet.)

A. Because the "Arcona's" anchor was cast off her bow. Her lines up to that time had been taut sufficient to keep her in that position. It would not have made any difference if she had slacked the port line, but had she left them taut, a change in the position of the "Arcona" certainly would have taken place and the "Arcona" would have come closer to the "Mikahala."

Mr. OLSON.—I move to strike on the ground it appears it is merely a conclusion of the witness.

Mr. WARREN.—Will your Honor rule on the objection? [2790—1959]

Mr. OLSON.—My motion is to strike the answer of the witness that there was no change in the condition of those lines.

Mr. WARREN.—That's a different motion, your Honor.

Mr. OLSON.—That's the motion that I made, on the ground it is a conclusion of the witness.

The COURT.—In one way of looking at this it amounts to the answer of an experienced seaman as to what the effect would be if there was strain put on the line. That is to say, that the ship would come over.

The motion is denied. This same thing can be brought out in another way.

Q. Captain, any other reason than that you have just mentioned why you know the "Arcona's" lines were not taut at any time that night?

A. Outside of the reason that I have just stated, if there had been any work on her lines on board the ship, I was observing the "Arcona" and the "Celtic

(Testimony of Albert Tullet.)

Chief" the whole time from dark until the ship finally came off, I certainly would have seen them working their lines, and the only possible difference on the lines that could have taken place would have been the slack of the lines. There was no possible chance of the lines coming tighter without the relative positions of my vessel and the "Arcona" changing that I can state positively and prove it.

Q. Do you know whether or not the "Arcona" used her propeller at any time? A. She did not.

Q. How do you know that?

A. Because I was close enough to the ship so that I could have seen the motion of the water.

Q. Then before the time when the search-light went on, in the forenoon when she broke her first line, it was from pulling or the use of her propeller. What effect, in your judgment, would heaving by the "Arcona" on her anchor lines have had upon the vessel itself?

A. Upon the "Arcona"? [2791—1960]

Q. Yes.

A. It would have brought the "Arcona" closer to the "Mikahala."

Q. How close?

A. It would depend how long she would heave. If she hove until she got her lines taut to the "Celtic Chief," she would foul the "Mikahala."

Q. About what time, to your best recollection, did the "Celtic Chief" come off the reef?

A. Twenty minutes past twelve. That is that's when my lines were cut. She started to come off, started to move, at quarter to twelve.

(Testimony of Albert Tullet.)

Q. Now, do you know anything of—I withdraw that. Will you describe particularly what took place in connection with the "Mikahala" during the time following eleven o'clock when the search-light went on up to the end of the "Arcona's" proceedings that night, giving in detail, as near as you can.

Mr. OLSON.—From when?

Mr. WARREN.—From the time that the light went on until she was finally off?

A. The operations of the "Mikahala."

Q. The "Mikahala."

A. The "Mikahala" started to pull full speed at half-past eleven, at quarter to twelve when I realized the ship was beginning to move. My men had been ordered to stand by the stations. Some were stationed at the anchor, some were stationed at the lines. At quarter to twelve I gave the order.

Q. Did you heave up the anchor?

A. I hove up the anchor until she took a turn around the weather bit and broke it.

Q. Why?

A. To be clear of the "Arcona." I broke my anchor purposely.

Q. Then what did the "Mikahala" do?

A. Then the "Mikahala," as the ship came off, cut away her starboard hawser and put the wheel hard starboard and steamed full speed at right angles to the "Celtic Chief" to pull her clear of the "Arcona." [2792—1961]

Q. What direction did the "Celtic Chief" take as she came off the reef, as she moved away?

A. When she first started to move off, she came

(Testimony of Albert Tullet.)

directly astern and I saw there was going to be a collision between the two vessels. She was closing the gap between the "Celtic Chief" and the "Arcona" so rapidly that caused me to pull with all our power at right angles to the vessel to pull her clear and also to take her sternway and avoid a collision between the "Arcona" and the "Celtic Chief."

Q. How near did the "Celtic Chief" actually approach the "Arcona" under the conditions just mentioned?

A. From the position on my vessel on the bridge, I should judge about twenty feet when the "Arcona" then began to move.

Q. In your experience as a seaman and navigator, taking into consideration the distance between the "Celtic Chief" and the "Arcona," the direction the "Celtic Chief" was moving and her rate of speed, can you say how near she would have approached the "Arcona" without the interference of a steady pull from the "Mikahala"?

A. I certainly believe that there would have been a collision.

Q. Could the "Arcona" have gotten a strain on her lines or either of them at any time that night without your having known it? A. No.

Q. Referring to the lightering operations, Captain, by the "Mikahala" and "Helene" and their boats, will you describe the conditions under which those boats worked with respect to the "Celtic Chief" particularly?

A. The conditions at the time when we commenced to lighter fertilizer from the "Celtic Chief"?

(Testimony of Albert Tullet.)

There was a heavy southeast swell running and it was extremely dangerous to our men in the boats and also to the boats in lightering.

Mr. OLSON.—Just a moment. I move to strike the last statement of the witness on the ground it is his conclusion.

The COURT.—Objection is overruled. [2793—1962]

Mr. WARREN.—In what way was it dangerous for the boats to operate in unloading at the "Celtic Chief"?

A. The danger was the boats were loading on this heavy swell with a half a ton or perhaps more fertilizer hanging over their heads, the boat would rise from twelve to fifteen feet on the swell and there was more danger of the boat coming up under this load, which was almost the same as the load dropping.

Q. Any other danger?

A. The danger if it was driven against the ship and smashing the boat.

Q. Any other danger—I withdraw that last question. How would the boats be driven against the side of the ship?

A. By the force of the swell. The ship was stationary like a stone wall. The boat had to take the full force of the swell. There was no motion of the vessel. The boat was driven against the ship's side.

Q. On how many sides did the boats operate?

A. The "Mikahala's" boats operated while lightering fertilizer into the "Mikahala" on the starboard side of the "Celtic Chief."

Q. And the "Helene's" boats?

A. Well, they were working the "Mikahala" also,

(Testimony of Albert Tullet.)

on the starboard side.

Q. Was there any loading done to the "Mikahala" from the port side? A. Beg pardon?

Q. Was there any loading done to the "Mikahala" from the port side of the "Celtic Chief"?

A. No, sir.

Q. What were the conditions on the port side of the "Celtic Chief"?

Mr. OLSON.—Object unless it appears that the witness is qualified to testify.

Q. Do you know, Captain, what the conditions were on both sides of the "Celtic Chief"?

A. No, sir. It was not on the port side there out of my view.

Q. Only on the starboard side as far as you could see? A. As far as I could see from where I was.

Q. How long did the boats operate, Captain, unloading? [2794—1963]

A. They commenced on the first day about half-past ten.

Q. What day was that? A. Tuesday.

Q. Tuesday?

A. Yes, sir. They worked till two o'clock, the following morning, with only sufficient time to obtain their meals during that time.

Q. After that?

A. Then they were given a rest and started again at half-past five in the morning and worked that day up to about eleven o'clock or a little after, perhaps, on Wednesday.

Q. Now, any difference in the operations in daylight and darkness so far as danger was concerned?

A. The danger was greater during the darkness.

(Testimony of Albert Tullet.)

Q. Why?

A. Because the men could not see and the fertilizer was swung out over their heads and all the time the boats were rising and falling on these big swells. It certainly made it very dangerous to the men in the boats.

Q. That's the danger to the men you have testified about? A. Yes.

Q. Were any lights used in the unloading operations at night? A. We have no search-light.

Q. I mean on the boats?

A. Oh, lamps, oil lamps.

Q. After the search-light went on that night, how many vessels were pulling on the "Celtic Chief"?

A. Three.

Q. Name them, please.

A. "Likelike," "Helene," "Mikahala."

Q. And at the time she came off, how many?

A. Three.

Q. The same? A. The same vessels.

Q. Immediately—I'll withdraw that. Referring, now, to the time that the ship came off and approached the "Arcona" and you say the "Arcona" started out, will you describe what the "Arcona" then did?

A. She started to heave on her anchor and then she started to tow the vessel stern first to [2795—1964] sea with the wire hawser that she had attached to her midship chock.

Q. Do you know how many wires there were attached then between the "Arcona" and the "Celtic Chief"?

A. No, I do not. I was very busily engaged on

(Testimony of Albert Tullet.)

my own vessel at that time. I saw the "Arcona" start away suddenly when I was expecting the collision to take place. The gap was closing rapidly and I was doing my damndest to take the ship, the "Celtic Chief," at the same time to draw her to one side of the "Arcona." Then all at once I saw the "Arcona" start to sea very quickly and the "Celtic Chief" behind her. Just at that moment my hawsers were cut on board the "Celtic Chief."

Q. Describe the motion of the "Celtic Chief" at about the time she began to first come off. How did she move?

A. She moved a little and then she stop and it was that that gave me the indications that she was coming off and I gave my orders to heave my anchor up. She'd move a little, then stop; then I could see she was coming again because I had a bearing of a light ashore, that point in Diamond Head here, and we were changing our positions after my anchor was up. I remember speaking to the mate at the time and said, "She's beginning to come."

Q. Was there any change in the relative positions of the "Mikahala" and "Arcona"?

A. Yes, the "Mikahala" was out already and to the port side further when the "Arcona" was through heaving up the anchor, then as the "Celtic Chief" started to move we were getting near the "Arcona" in a horizontal way. That is the same as if we would be passing her.

Q. How far, what was the distance you moved that way in passing the "Arcona"?

A. I should judge perhaps half the length of the "Mikahala." Just as soon as I saw the ship afloat

(Testimony of Albert Tullet.)

I put my wheel hard on starboard and changed my course about eight points, eight or nine points, and veered first in an easterly direction and then more towards the north. [2796—1965]

Q. Prior to the "Celtic Chief" coming off, do you know of any motion on her part?

A. On the "Celtic Chief"?

Q. Yes. Other than moving toward the sea.

A. I could see the vessel kind of tremble like a vessel striking.

Q. Describe that.

A. In the rise and fall of the swell when the vessel would strike, she'd begin to tremble, her masts and yards would shake, showing that she was striking the bottom.

Q. Do you know how that was caused?

A. By striking the bottom. The vessel was then moving and rising on the swell.

Q. Was her motion a motion up and down?

A. Caused by the swell.

Q. How high would you say the swell was, Captain, saying during Wednesday?

A. I should judge they reached a maximum of at least fourteen feet.

Q. And during Wednesday evening?

A. Wednesday evening after it was dark I couldn't say.

Q. Taking the height of a swell, how did you measure that? A. Beg pardon?

Q. How can you measure the height of a swell?

A. How do I measure it?

Q. How do you judge it?

A. The height of the swell is judged on the object

(Testimony of Albert Tullet.)

where it first breaks. The height of the swell is the depth of the water that it breaks in. Outside of that we have no method of measuring it. For instance, if a swell was to break in ten fathoms of water, that sea would be sixty feet.

Q. Do you know of any special instances of where seas have broken during unloading operations of boats?

A. The sea broke right abreast of the ——— once.

Q. Any boat there at the time?

A. There was a scow. I think it was going to tear the scow [2797—1966] adrift.

Q. Do you know whether it broke more than once?

A. No, I didn't observe more than one time when it actually broke alongside the ship.

Q. Do you know approximately how high that was when it broke?

A. I should judge approximately it was about sixteen feet.

Q. Do you know the depth of the water there?

A. No, sir, I do not.

Q. What's that?

A. I do not. I was judging by the height the sea mounted the ship's side.

Q. How frequently would those larger swells come?

A. Well, as I stated before, I only saw one break, but there was frequently heavy swells from twelve to fourteen feet.

Q. Is there any difference in the height of a swell where it is moving along the sea and then breaks?

A. Yes.

Q. What?

(Testimony of Albert Tullet.)

A. It rises as soon as it strikes. The friction that takes place causes it to rise in the water. A body of water travelling when it strikes shallow water it rises and that's the reason. When the sea breaks the height of the sea has reached its maximum.

Q. Is there any difference in unloading a floating vessel and one that is stationary?

A. A great difference.

Q. What?

A. One is, a floating vessel gives with the sea; a stationary object, the boat has to take the full swell and all of its force. That's demonstrated many, many times in our experience in these islands. I can recite an instance of that. Two weeks ago the "Mauna Kea" and the "Claudine" and the —— wanted to land their passengers at the landing but they landed them without any danger on board of my ship. No danger whatever.

Q. From your experience as a mariner, will you say whether or not the Inter-Island vessels were in any danger in their operations [2798—1967] in connection with the "Celtic Chief"?

A. There was some danger, yes.

Q. What danger?

A. The danger was in the event of my hawsers breaking they might foul the propeller, and in that event there would be danger of collision between the "Mikahala" and the "Arcona" because with the propeller disabled, the vessel would swing around or go slow and then would crash into the "Arcona."

Q. What was the tendency of the tide or the water?

A. Setting to the westward and the swells from

(Testimony of Albert Tullet.)

the southwestward.

Q. How long would it take to stop the engine, to stop the propeller of a steamer? A. How long?

Q. Yes.

A. It would take first time for the officers to get the signal and the signal to the engineer would probably take under those conditions at least a minute or a minute and a half.

Q. How long would it take for a propeller to draw in the hawser?

A. It would depend upon how long the hawser was.

Q. Make any difference where she broke?

A. Yes, depends upon from where it broke. If it broke anywheres near the "Celtic Chief," there would be probably no danger, the weight of the hawser would keep it away from the propeller. If it should break near the "Mikahala," there would be danger of its bounding back and getting into the propeller almost instantly.

Q. If, to avoid the hawser being drawn in by the propeller, the propeller would stop, what then would be the condition of the steamer?

A. The steamer would be able to drift and you wouldn't be able to keep the engine stopped without danger of a collision with the "Arcona."

Q. How about the other vessels, the "Helene" and the "Likelike"?

A. With the position of the "Helene" and the "Likelike," the "Helene" [2799—1968] might possibly swing clear of the "Likelike." I wouldn't be able to judge exactly in regards to her position. I think the "Helene" would perhaps swing clear of the "Likelike" in the event of her hawser breaking.

(Testimony of Albert Tullet.)

In regard to the "Arcona," I think that she would perhaps swing clear of the "Helene."

Q. If her line broke? A. If her line broke.

Q. Well?

A. The position that I was in I didn't have a position to exactly judge their distances between one another, only by guessing at it, so I couldn't state positively whether there was any danger to them or not.

Q. The "Helene" and "Likelike"?

A. The "Helene" and "Likelike."

Q. From your experience as a mariner and in connection with salvage operations, would you say whether or not the "Celtic Chief" was in any danger by reason of her position on the reef?

A. She was in great danger.

Q. From what?

A. Danger from the swells setting her around and perhaps taking the whole side out of her.

Q. Which side?

A. Well, which ever side she would set around on. In this instance the swells were striking her on the starboard quarter. It would set her around on her port bilge. The swells would tend to send and lay her on her port bilge.

Q. How with the vessels pulling on her?

A. What was the danger?

Q. Yes.

A. Well, danger of a storm coming up and the sea getting higher and destroying the vessel. There was that danger existing all the time.

Q. What part—the Miller anchor, Captain, did you observe that? A. Yes, sir, I did.

(Testimony of Albert Tullet.)

Q. At what times?

A. Only during the time it was light. I observed it both before dark and after the electric light came on.

Q. Well, up to the time that it got dark, describe the positions [2800—1969] of the Miller anchor-line.

A. The position from the “Celtic Chief” was that it looked to me as if it was only the weight of the line, the only strain on it was the weight of the line. At that time I don’t know what they were doing on board the ship.

Q. I’m directing your attention to the line as it came over the stern of the “Celtic Chief.”

A. Well, it came over the stern and entered the water in a slack condition.

Q. About how many feet of that line would you say there were from the point where it came over the stern to the place it entered the water?

A. I should judge between thirty and forty feet.

Q. And now after the—from the time it got dark until the search-light went on, you didn’t observe that line? A. No, sir.

Q. After the search-light went on you say you observed it? A. Yes, I saw it again.

Q. And what was its position then?

A. It’s position was about the same.

Q. Do you know whether or not there was any change in the position of that line from the time the search-light was on and up to the time the vessel came off?

A. No, I didn’t observe any change in the line.

Q. Had there been any change would you have

(Testimony of Albert Tullet.)

known it? A. Yes, I would.

Q. Just how did that search-light appear? Where was it thrown?

A. The search-light was used from the "Arcona" and thrown on the "Celtic Chief."

Q. How thrown on the "Celtic Chief," that is, what parts of it?

A. My recollection is that the whole ship was lit up by it.

Q. Where would you say would be approximately the center of the shining of the light? Where would that strike?

A. That I wouldn't say. I don't remember.
[2801—1970]

Q. Approximately how much anchor-chain did the "Mikahala" have out?

A. About twenty-five fathoms.

Q. Twenty-five?

A. Twenty-five or thirty fathoms.

Q. How much did you get in before you broke your chain?

A. We broke the chain about six or seven fathoms from the anchor. The anchor got foul of the hawsers and we couldn't get it up any further so I broke it purposely.

Recess.

Q. Captain, do you know of any photographs in connection with the operations of the "Celtic Chief"? A. Yes.

Q. Who took them?

A. I took them myself.

Q. I show you four prints indicating them to be enlargements, and ask you if you've seen these be-

(Testimony of Albert Tullet.)

fore and can identify them?

A. Yes, those are enlargements from the originals that I took.

Q. Referring, now, I hand you one of these photographic prints and ask you to tell me what the vessels is there shown? A. "Celtic Chief."

Q. And two lines from the stern of the "Celtic Chief" are what lines, if you know?

A. The "Intrepid" and the "Helene."

Q. What time was that picture taken?

A. That was taken Tuesday morning around about eight or nine o'clock.

Q. Now, pointing to another line indicated as running past a small boat, what line is that?

A. "Mikahala's" line, "Mikahala's" hawser.

Q. Are there any other lines indicated on that picture?

A. No, sir. This is the "Intrepid." This is the "Helene."

Q. The outer one is the "Helene" line and the middle one the "Intrepid" and the one in the foreground the "Mikahala"?

Mr. OLSON.—Is that correct? [2802—1971]

A. The upper one, that starboard, "Mikahala"; center one, "Intrepid"; port one, "Helene."

Mr. WARREN.—I'd like to offer this.

The COURT.—It may be received.

(Photograph received in evidence and marked Libellants' Exhibit "I," Inter-Island and Matson Navigation Co., Captain Tullet's Testimony.)

Q. I hand you another and ask you if you can identify the vessels in this picture. A. Yes.

Q. What are they?

(Testimony of Albert Tullet.)

A. The "Intrepid" and "Mauna Kea." The one in the foreground is the "Intrepid" and the other one is the "Mauna Kea."

Q. What time was that taken?

A. That was taken sometime on Tuesday.

Q. Did you make any notes of the times these photographs were taken?

A. I made notes and furnished them to the person I gave these original copies to, Captain Haglund.

Q. And in whose handwriting are those notes on the back? A. I don't know.

Q. You don't recognize it?

A. No, they are not mine.

Mr. WARREN.—As far as this witness' testimony is concerned, the notations on the back are stricken from his testimony and are not to be taken as part of it.

The COURT.—So ordered.

Q. I hand you a third photograph, Captain. What vessel is there shown? A. "Celtic Chief."

Q. And what lines?

A. The "Intrepid," the "Helene," and "Mikahala's" lines.

Q. The "Intrepid" line being where?

A. In the middle, the center one.

Q. The "Helene's" being?

A. Port side of the "Celtic Chief."

Q. Do you know if the "Arcona's" line was shown? [2803—1972] A. No, sir.

Q. What is the small boat close alongside the "Celtic Chief" there? A. "Mikahala's" boat.

Q. The picture was taken when?

(Testimony of Albert Tullet.)

A. The picture was taken, I don't remember the exact time they were taken.

Q. What day?

A. I don't remember the day either. It was either Monday afternoon or Tuesday morning.

Q. Did you take any pictures on Wednesday?

A. Yes, sir.

Mr. WARREN.—I'd like to offer also this photograph, your Honor.

Q. I hand you a fourth photograph. That also is the "Celtic Chief"?

A. That's the "Celtic Chief," yes.

Q. What lines are there?

A. Lines from the "Likelike," the "Helene," the Miller anchor lines, the "Arcona's" lines. Doesn't show the "Mikahala's" line. It's too dim. The only lines shown are the "Arcona," "Helene," "Likelike," the Miller anchor line.

The COURT.—It may be received.

(Photograph received in evidence and marked Libellant's Exhibit "K.")

Q. The one going in the water near the ship?

A. Yes, the one, the line used by the "Arcona" in taking the other line on board.

Mr. OLSON.—That's the only line of the "Arcona"?

A. That is the other "Arcona" line over my line crossing the white streak.

Mr. WARREN.—Now, what two lines are furthest from this vessel, the upper heavier one is what line? A. "Helene."

Q. And the one coming from behind the vessel?

(Testimony of Albert Tullet.)

A. "Likelike." [2804—1973]

Q. Do you remember when this was taken?

A. That was taken Wednesday afternoon.

Mr. OLSON.—What time?

A. I don't remember the exact time. I didn't take the times when I took them by the clock.

Mr. WARREN.—I ask also to have this introduced.

(Photograph received in evidence and marked Libellants' Exhibit "N.")

Q. Now, Captain, referring to Libellants' Exhibit "K," and referring to the indication of the swell in that photograph, what, in your judgment, was the height of that particular swell at that time as here photographed? A. About twelve feet.

Q. How do you arrive at that distance?

A. Judging from the height it's mounting the vessel's side. I judge the height of the vessel's stern twenty feet above sea level, and measuring the distance of the swell mounting the ship's side will give the twelve feet, the height of the swell. You can measure it on the photograph by taking the height of the ship twenty feet above sea and the hawser line and with a pair of parallel rulers.

Q. What are these pencil marks?

A. That's where I measured it.

Q. How did the height of this swell compare with any others that you may have seen?

A. That was, I should consider, a swell that was perhaps at that day a medium swell, an average of what was running during the day. There were some smaller and some much larger. The one that I saw

(Testimony of Albert Tullet.)

that broke, I should judge was about four feet higher than that. It broke by the fore part of the fore rigging, by the fore hatch.

Mr. WARREN.—Cross-examine.

Cross-examination of ALBERT TULLET on Behalf of Libellee. [2805—1974]

Mr. OLSON.—Q. How often would these swells come in in the course of an hour on Wednesday?

A. Every few minutes. There'd probably be three or four big swells and between these there'd be a few smaller ones.

Q. According to that picture there or those pictures of these swells, apparently the sea is very smooth except for that swell. Do you mean to say there was what you would call a rough sea?

A. No, sir, not a rough sea but what we call a ground swell.

Q. As a matter of fact, the water except as it piled at the edge of the reef there was practically smooth, was it not, referring you to this picture? I am now referring to Libellants' Exhibit "K." Isn't that so?

A. The swell would be smooth in one place where it would be rough in another.

Q. I'll ask you if the sea wasn't smooth except for the piling up of that swell?

A. No, the swells were coming in from seaward.

Q. Doesn't this picture show that the sea is practically smooth with the exception of the swell?

A. It shows that because the picture was only capable of taking one swell.

Q. Around the boats where you were working about the "Mikahala," how high were the swells there?

(Testimony of Albert Tullet.)

A. They would reach from about ten to twelve feet.

Q. There was very little difference?

A. Several times they'd reach about sixteen feet.

Q. When did they reach sixteen feet?

A. There's one that I saw break, but there were others, that reached almost that height. [2806—1975]

Q. There was one sixteen-foot swell as far as you observed, then, between these other swells that you say were ten or twelve feet high?

A. I don't understand the question.

Q. You've testified to one sixteen-foot swell?

A. Excuse me. I testified to one swell breaking which I judge to be sixteen feet.

Q. Were there other swells that reached as high as that? A. Fifteen and a half?

Q. You've testified to one sixteen-foot swell that you observed. A. Yes.

Q. Now, then, were there other swells that you have testified concerning that were apparently a little larger than the swells out alongside your vessel? Weren't there? A. Yes.

Q. Very little larger?

A. Two or three feet larger.

Q. Referring to Wednesday, Captain Tullet, the day that the—the last day of the operations there, I'll ask you about how far apart these swells were. That is, I mean, in time as close as you can remember now.

A. Each swell?

Q. Yes.

A. Oh, it would only be a mere guess.

(Testimony of Albert Tullet.)

Q. Well, let's have your presumption.

A. My presumption of the time between swells would probably be ten or fifteen seconds.

Q. And do you mean to say that swells were coming in there sometimes at intervals of ten or fifteen seconds? A. Yes.

Q. Isn't it the fact that occasionally there would be two or three of the larger swells that would come in, one after the other, and then there would be a period of time when, ordinarily speaking the water would be smooth for a considerable time?

A. Would be considerably smoother but there'd still be the smaller swells running. [2807—1976]

Q. They wouldn't affect the unloading of the boat?

A. No, not the smaller swells.

Q. It's only the larger swells that have a tendency to make the unloading difficult? A. Yes.

Q. Isn't it a fact that these intervals between the larger swells would run up to ten or fifteen minutes?

A. No, sir.

Q. How long would these intervals be?

A. Possibly three or four or five minutes.

Q. And that's all? A. Yes, sir.

Q. How were the swells on Wednesday as compared with Monday in size?

A. On Monday there was quite a heavy swell running up.

Q. Isn't it the fact that the swell that was running on Monday was the heaviest that ran of any of the time that the "Celtic Chief" was on the reef as far as you know? A. I couldn't state that.

Q. Well, what is your recollection on the point?

(Testimony of Albert Tullet.)

A. My recollection of the point is that there was quite a heavy swell on Monday and that there were times between Monday and Wednesday when the swell went down considerably and there were times when it rose again higher.

Q. Isn't it the fact, Captain Tullet, that the swell gradually, from Monday until Wednesday night, reduced so that on Tuesday the swells were running not quite so violently as on Monday and likewise on Wednesday the swells were not running quite as violently as on Tuesday? A. No, sir.

Q. That's not the fact? A. No, sir.

Q. And if witnesses have testified to that effect heretofore on this trial, they have not told the truth?

A. They have evidently been mistaken.

Q. That is your present belief?

A. That's my belief.

Q. And recollection? A. Yes. [2803—1977]

Q. And if witnesses have testified that these swells would come along on Monday, two or three at once, and then it would be practically quiet for a considerable period of time, fifteen minutes, half an hour, or more, it would also be incorrect, would it?

A. According to my opinion, yes, sir.

Q. Captain Tullet, are you prepared to say that you have never, in the course of your experience in navigating in these Islands, seen shore boats of the Inter-Island Steam Navigation Co. operating alongside of vessels in the regular inter-island trade, taking cargo off or putting cargo on the vessels with swells running higher than the ones you saw out at the "Celtic Chief"?

(Testimony of Albert Tullet.)

A. I have noticed alongside of my vessel when they have been running as high and higher.

Q. Much higher?

A. Not much higher, no, sir.

Q. Higher? A. Higher.

Q. Higher than you saw it running at any time out around the "Celtic Chief"? A. Yes, sir.

Q. And, as a matter of fact, under those conditions, cargo is taken off and put on the vessels in the regular inter-island trade with swells running as high as that and higher, in the ordinary course of business, is it not? A. Yes, sir.

Q. You spoke of a recent occurrence where the "Mikahala" received passengers on board or whatever it was from the "Mauna Kea." The "Claudine" and the "Mauna Kea" at ——— Landing.

A. I took the passengers on board at ———.

Q. Was your boat lying near the wharf?

A. My boat was at the anchorage.

Q. In deep sea? A. About six fathoms.

Q. Now, alongside of the wharf how deep is it?

A. Alongside of the wharf is about half a fathom.

Q. Make considerable difference in approaching that wharf?

A. The danger in approaching that wharf was the big swells running in. [2809—1978]

Q. Also the shallowness of the water?

A. No, the swells were breaking that day in five fathoms.

Q. The swells were breaking out near your vessel?

A. Not breaking. My ship was riding those swells easy.

(Testimony of Albert Tullet.)

Q. With the "Mauna Kea," "Claudine" and "Mauna Kea"—don't you know a vessel as large as the "Mauna Kea" lying at an ordinary anchorage with swells of the kind that were running around the "Celtic Chief" or about the "Celtic Chief" on Tuesday or Wednesday, would have comparatively little motion? Isn't that so?

A. It would depend how the vessel was lying.

Q. The "Celtic Chief" was lying practically astern of these swells. These swells were striking her very little on her starboard corner.

A. Striking her about three or four points.

Q. As much as that?

A. The swells were running about southeast.

Q. How many degrees would that be to her starboard?

A. One point is eleven degrees and a quarter.

Q. So, practically speaking, it would be about forty-five degrees.

A. Four points would be about forty-five degrees.

Q. That's your judgment?

A. Between three and four points.

Q. So that no person could say with any reasonable degree of accuracy that those swells were, practically speaking, hitting her dead astern or a trifle over?

A. No, sir, they were striking between three and four points on her starboard quarter.

Q. It wouldn't be difficult to say?

A. A shoreman might think three or four points was a little off one way or the other.

Q. In this case I'm talking to seamen.

(Testimony of Albert Tullet.)

A. A seaman would claim it was three or four points.

Q. I'm asking whether or not a seaman would describe that swell as striking the "Celtic Chief" astern a little bit to starboard. [2810—1979]

Q. Would that be a correct description from a seaman's standpoint? A. No, sir.

Q. Even if the "Mauna Kea" were lying in a swell of this kind and the swell striking her three or four points on the starboard quarter in an ordinary anchorage, isn't it the fact that even so she would have comparatively little motion with the kind of swell that was running on Tuesday and Wednesday?

A. She would have considerable motion.

Q. She would? A. Yes, sir.

Q. If such a swell were striking the "Mauna Kea" in ordinary anchorage dead astern they would, nevertheless, run as high alongside of the "Mauna Kea" as they did her alongside of the "Celtic Chief"? A. They would not.

Q. Why not?

A. Because the vessel would rise.

Q. Even if she had comparatively little motion?

A. The motion is given by the water.

Q. Would not the water pile up near her side?

A. Nothing, not like a vessel lying steady.

Q. Would not it pile up? A. Very little.

Q. Do you mean to say, Captain Tullet, that a vessel and shore boats alongside that those swells would not rise and fall a considerable distance?

A. They would rise and fall but not very much.

Q. Don't you know that when you are discharging

(Testimony of Albert Tullet.)

passengers from alongside of your vessel that it, the vessel, rose up so it would come up alongside of or above the lighter and then would drop?

A. That's not the rise and fall of the vessel that does that, it is the rolling.

Q. But nevertheless there is that rise and fall?

A. The roll of the vessel.

Q. You take the "Mikahala"—she rolls considerable? A. Sometimes.

Q. You take a shore boat taking cargo from the "Mikahala." It would [2811—1980] have this rise and fall due to the rolling of the "Mikahala," wouldn't it? A. Certainly.

Q. Does the "Mikahala" ever discharge cargo at night? A. Sometimes.

Q. And there might be that kind of roll even at night?

A. If it rolls with a very heavy swell we wouldn't undertake to put the freight in the boats for some time.

Q. I'm asking you if you don't sometimes discharge cargo at night when there is more or less roll to the "Mikahala." And under those conditions the men in the shore boats incur more or less danger, do they not, from the rise and fall and the coming in contact or possible coming in contact with the swells?

A. They would have been considerably dangerous.

Q. But, nevertheless, there is that rise and fall which would tend to create that kind of a danger?

A. Probably creates some danger, yes.

Q. As a matter of fact, you've very often seen various shore boats take cargo where there's been

(Testimony of Albert Tullet.)

considerable rise and fall alongside the vessel and shore boat, haven't you, due either to the rolling or the swell?

A. Yes, I've seen them putting freight into the boats when there has been considerable roll on the ship.

Q. And considerable rise and fall of the shore boat?

A. It wouldn't be the shore boat rising and falling.

Q. A considerable variation then?

A. Variation, yes.

Q. Referring to Wednesday—I withdraw that. At the time that this picture was taken, I'm now referring to Libelee's Exhibit "K," I'll ask you if that was the average of the high swells that were running on that day.

A. No, sir, there were swells much higher than that.

Q. On that day? A. Yes. [2812—1981]

Q. What day was that? A. On Wednesday.

Q. Was that taken on Wednesday?

A. I thought you said you were referring to Wednesday.

Q. I say what day was that picture taken on. Well, I'll withdraw that question, I think, Captain, you don't seem to be able to remember it.

Mr. WARREN.—I object to that. Give the witness time.

A. I've taken a good many pictures and I have to go over them days to ascertain when I took those pictures.

Mr. OLSON.—I now will withdraw the question

(Testimony of Albert Tullet.)

in view of the fact that the witness seems to have difficulty in recollecting the time and will put another question.

Mr. WARREN.—I object to the statement as just made, your Honor, and move to have it stricken from the record as being improper. I also object to counsel withdrawing that question, your Honor, for the reason that it was asked and answered and when a question is answered it cannot be withdrawn.

Q. Captain, you said that you cannot remember on what particular day this picture was taken. I'm referring to Libellee's Exhibit "K."

A. I haven't said that.

Q. Have you answered when that was taken?

A. No. You haven't given me an opportunity to answer it. I was considering it.

Q. Kindly consider it and answer.

A. May I look at the picture?

Q. Certainly.

A. That was taken Wednesday A. M. I think.

Q. Wednesday morning?

A. I think so as near as my recollection serves me.

Q. Didn't you state before that was taken on Tuesday in reply to counsel's question to you?

A. I don't think so. I don't remember stating that. [2813—1982]

Q. You are sure it was taken on Wednesday now?

A. I feel sure it was taken on Wednesday.

Q. Now, was this swell an average swell of the kind that was running on Wednesday?

A. It was not the highest. It might be the average or the minimum. What I'd consider minimum.

(Testimony of Albert Tullet.)

Q. Minimum referring both to the large and small?

A. No, to the large swells.

Q. Minimum large swells? A. Yes.

Q. How much higher would they run?

A. Probably four feet.

Q. How many did you see that ran four feet higher? A. I couldn't answer that question.

Q. One?

A. The one I had reference to was the only one I saw break.

Q. And that was the only one, you said, was sixteen feet high?

A. I said the others reached approximately.

Q. Didn't you say pretty nearly the same height as the one that broke? A. Yes.

Q. And the one that broke was sixteen?

A. According to my judgment. I'm stating this approximately and I couldn't tell you within a foot or perhaps two feet.

Q. How many swells in an hour would run higher than that? A. I couldn't tell you that.

Q. Have you no idea? A. No.

Q. A few or many?

A. As I stated before, the swells would run in with an interval of five minutes, perhaps. Every time the big swells came there would be a big bunch of them and some of them reached higher than others, but I couldn't tell you how many swells would run in that way or the exact time of the swells or the exact height.

Q. Referring to Libelee's Exhibit "L," you testified, Captain, that the "Arcona's" lines or line was indicated in this picture, did you not?

A. Yes, sir. [2814—1983]

(Testimony of Albert Tullet.)

Q. Now, referring to a small line of the "Arcona," do you mean by that one of the lines that was used in getting these final lines aboard and heaving?

A. Yes.

Q. A heaving line?

A. A heaving line. What we call a heaving line.

Q. The fact that this running line was still there indicates to your mind, does it not, that this photograph was taken during the time that the "Arcona" was getting its lines on board? A. Yes.

Q. The "Arcona" hadn't yet got both of its lines on board when that picture was taken? A. No, sir.

Q. So that this picture is not a photograph showing the lines of the "Arcona" after she had gotten her lines fastened on the "Celtic Chief"?

A. No, sir.

Q. Isn't the same true of the Miller anchor line, that this picture does not indicate the final position of the Miller anchor?

A. That picture indicates as regards the Miller anchor line, as near as my memory serves me, the only position I saw Miller's line in.

Q. You never saw it more taut than that?

A. No, sir.

Q. And you were able to watch the lines very carefully?

A. My whole attention was taken up with my vessel on a *qui vive* for the "Celtic Chief."

Q. You had no more reason for watching one particular line than another, did you? A. No, sir.

Q. And the same testimony would be true with reference to all of your observations as to lines?

A. Well, I had no particular object in viewing

(Testimony of Albert Tullet.)

those lines, at the same time I couldn't help but seeing them.

Q. And you saw the Miller anchor line in that position during the whole time?

A. I saw the Miller anchor without that strain.

Q. There was no strain according to your observation? [2815—1984]

A. There was strain enough to keep that line.

Q. Do you know where that anchor was laid?

A. Yes, sir.

Q. How far astern of the "Celtic Chief"?

A. I could state approximately. Probably six or seven hundred maybe six or six hundred and fifty.

Q. Don't you know that a line laid from that anchor in the depth of water that that anchor lay in, couldn't have one ounce of strain on it so far as the purchases attached are concerned in order that that line could have the position that it had when you observed it? Don't you know that the weight of the line itself—

A. The weight of the line itself would cause the line to remain.

Q. At that distance?

A. I thought you meant in regard to no strain. A line of that size you couldn't hold up without purchases and keep it without any strain on it.

Q. Did it curve? Did it curve or slack?

A. Yes, sir.

Q. Now, I'm asking you if your observation on that point is the same as that with reference to the other lines. That is to say, that you took no closer note of any other lines than you did of the Miller Salvage lines?

(Testimony of Albert Tullet.)

Mr. WARREN.—Object to the question as asked and answered, your Honor.

The COURT.—Objection overruled.

A. I stated that my particular attention was not taken up with the lines, but at the same time I couldn't help seeing those lines and from appearances of the lines thought that the Miller's line was in the same position as in that photograph.

Q. And you were able to see the Miller Salvage Co. line as well as the others?

A. Yes, sir. Not only saw it but I remember making the remark to one of my officers why Miller didn't get his line taut.

Q. What officer was that, by the way? [2816—1985] A. That I don't remember.

Q. Captain Piltz?

A. I don't remember whether it was Piltz or my second officer.

Q. Kindly refresh your mind on that.

A. I couldn't know that. I remember distinctly making the remark.

Q. What is the name of your second officer?

A. The present is Hilo.

Q. Then?

A. I don't remember when he was second officer with me then or not.

Q. You made that remark either to Captain Piltz or the second officer, that is, the person that you now refer to as second officer?

A. Whoever might have been second officer of the ship at that time. I don't remember.

Q. You don't know?

A. I could easily get that for you if you want that.

(Testimony of Albert Tullet.)

Q. But you can't remember?

A. No, I can't remember.

Q. So then, as far as your observation went, the only agencies that were doing any pulling on the "Celtic Chief" was the Inter-Island?

A. I don't know what the Miller Salvage Co. was doing during the hours of darkness.

Q. For some time before the "Celtic Chief" began to move until she came off, the only agencies that did any pulling were the Inter-Island boats?

A. To my observations, yes.

Q. Neither the "Arcona" nor the "Mikahala" line did anything during that period?

A. I'm positive that the "Arcona" did nothing.

Q. And you are positive that the Miller Salvage Co. did nothing with their line from your observation?

A. That I wouldn't state anything positive about because it was a twelve-inch hawser.

Q. And each time you saw the "Arcona's" line it was in the same relative positions? A. Yes, sir.

Q. So that, in your judgment, the Miller Salvage as well as the "Arcona" was doing nothing during that period of time? That's [2817—1986] your present judgment, is it not?

A. That's my present judgment.

Q. You are on the bridge, were you, all Wednesday night?

A. All of Wednesday night, yes, up to the time we got up alongside the wharf.

Q. Where is the bridge signal bell or the telegraph where you signal your engineer on the "Mikahala"?

A. Four different places.

(Testimony of Albert Tullet.)

Q. Was there one near where you stood?

A. Yes, one on each side of the ship, on the upper deck and on the lower deck.

Q. How far would you have to step to reach one of those signal bells?

A. I didn't remain in the same position.

Q. You were on the bridge?

A. The bridge would probably be about a hundred feet altogether. If I was standing amidships on the forward part of the bridge I'd have five seconds. If I was standing astern I would have probably one hundred feet.

Q. How long would it take you to go to the —— from the farthest point?

A. From the farthest point? Well, a hundred feet; I guess it would take me probably five seconds.

Q. Anyone else on the bridge besides yourself?

A. Yes.

Q. Who else?

A. As near as I can recollect, Mr. Dowsett was there.

Q. Any of your officers?

A. My officer was on the "Celtic Chief" up to about half-past eleven.

Q. Your first officer? A. First officer.

Q. Were there any officers on the bridge besides yourself?

A. No, not up to the time the chief officer came on board.

Q. When your propeller is going at full speed, how long does it take for you to actually stop the propeller?

A. It depends, of course, what the engineer is

(Testimony of Albert Tullet.)

doing. He may [2818—1987] be oiling his bearings or he may be attending to some other work.

Q. Suppose that he hears your signal and is able to respond to it at once. Suppose he hears your signal and responds to it at once, it shouldn't take him long?

A. I couldn't answer that question. I don't know anything at all about working the engines.

Q. You have no idea?

A. I have an idea, approximately how long. I have seen the occasion where the engineer was outside when he's standing by the engine and working the engine, it's only a few seconds.

Q. Why didn't you state that on direct testimony when you were asked by Mr. Warren regarding the amount of time it would take to stop the propeller? Why didn't you?

A. What statement did I make at that time?

Q. Do you remember?

A. I don't remember everything.

Q. You don't remember that?

A. Don't remember the exact words; no.

Q. Don't you remember what you testified as to the length of time it would get the propeller stopped in case the line broke?

A. I think I made the statement, the answer, as near as I remember that Mr. Warren asked me what danger was there to the line getting in the propeller and I said it depended where it broke.

Q. And testified also regarding the length of time it would take to stop that propeller?

A. I don't remember testifying to that.

The COURT.—I recall that, Captain.

A. I think the question was how long would it take

(Testimony of Albert Tullet.)

for that line to get into the propeller.

Q. Didn't you say it would take a minute or a minute and a half to get the propeller stopped?

A. I don't remember saying that.

Q. You are not prepared to say now that it would take a minute or a minute and a half?

A. I'm prepared to say it would take somewhere about that time. I'm not prepared to state the exact time. [2819—1988]

Q. And if you did say it would take a minute or a minute and a half on direct, you were saying something you didn't know?

A. If I said that I meant it was about that time.

Q. And that's all you meant?

A. That is all I meant to say.

Q. It might be considerably less than that?

A. It might be, yes.

Q. From the bridge you would naturally know practically at once if the line parted, wouldn't you?

A. It would depend upon what part of the bridge I was on and what line broke.

Q. Wouldn't you know it practically, well, within a second or two? A. Not necessarily so.

Q. If you were on the bridge wouldn't you feel the shock?

A. It would depend upon how it broke. You must recollect, Mr. Olson, I had two lines out. The strain was equal on both lines. If it broke close to the "Celtic Chief" it might escape my notice.

Q. Suppose it broke out near the "Mikahala," wouldn't you be practically certain to know it?

A. Yes, because I would naturally feel somewhat of a shock.

(Testimony of Albert Tullet.)

Q. If it broke near to the "Celtic Chief" there would be practically no danger of its getting mixed up with the propeller? A. No, sir.

Q. Naturally, because when there would be danger of its getting mixed up with the propeller you would feel the jar and would know at once that the line was broken if it was broken near the "Mikahala"?

A. I would have to go and notice. If I happened to be forward I would have to go to the after part to see if it was broken or not. There are other jars that come on board a ship besides the jar from a broken line.

Q. You said that you didn't notice the "Arcona's" line at the "Arcona's" stern, I believe, after the search-light was up. You still noticed the starboard line near the "Celtic Chief"?

A. I noticed her line over my line. [2820—1989]

Q. At the "Celtic Chief"?

A. At the "Celtic Chief." I had no particular object in watching that.

Q. Didn't you notice the "Arcona's" stern and the lines there?

A. I did not notice the lines. I remember seeing the "Arcona" pointed to ———. As I stated before, I didn't have any particular object in watching her lines.

Q. Isn't it a fact that her search-light sending a focus of light near the vessel would darken it so much so that you would not have a view of the stern?

A. I don't remember that. My remembrance is that the "Arcona" and the "Celtic Chief" were both in plain view, but I don't remember of watching for her lines, as I stated before. My whole attention was

(Testimony of Albert Tullet.)

taken up with the manoeuvres of my own vessel. I had a particular object in watching her line cross my lines on the "Celtic Chief."

Q. And that's the only place where you observed her lines?

A. That's the only place I observed it to take any notice of it. There are many things that I probably saw and not being of any consequence to me, I naturally don't remember them.

Q. One of the dangers that you spoke of that the "Mikahala" was subject to was that if one of her lines should part and get mixed up with the "Mikahala," it would swing around. When it got into the propeller the vessel would be disabled, would tend to swing her to the anchor. What was keeping her in position was her anchor. If one end should break she'd naturally swing to the other and that would bring the danger of the "Mikahala" colliding with the "Arcona." Couldn't you have hove in on your anchor somewhat?

A. I could but perhaps not in time to avoid the collision. Naturally that would be the logical way out of it and the thing to do, but it might not be in time.

Q. The swell, you say, was running toward the "Celtic Chief"?

A. About three or four points on the starboard quarter.

Q. And that swell, of course, was striking the "Mikahala," running [2821—1990] the same direction?

A. The swell was running the same direction, certainly.

Q. What was the length of the line of the "Mika-

(Testimony of Albert Tullet.)

hala? A. It was a full coil.

Q. Well, what's the length?

A. 125 fathoms. That is the length from the extreme end of it.

Q. What was about the distance between the two ships? A. I should judge about 500 feet.

Q. Do you know what the length of the lines of the "Arcona" were?

A. The distance to them? What do you want to know?

Q. Stern to stern.

A. I should judge perhaps about 550.

Q. Wasn't the "Arcona" lying further ahead, more than 50 feet?

A. It might have been more than 50 feet, but it wasn't any less.

Q. You made a drawing here, Captain Tullet, showing that the "Arcona"—I'm now referring to Libellant's Exhibit "H"—showing the "Arcona" ahead of the "Mikahala."

A. I also made the statement when I made this drawing, that I wasn't drawing that to scale, only to show the position with regard to direction.

Q. The approximate position with relation to one another—that is, the towing vessels—isn't shown?

A. There are two towing vessels.

Q. Have you shown—

A. In regard to the bearing from the "Celtic Chief."

Q. Any reference to which was ahead?

A. Without any reference to the distance.

Q. Isn't it the fact that the "Arcona" was lying with her stern forward of the beam of the "Mika-

(Testimony of Albert Tullet.)

hala''? A. With her stern forward of the beam?

Q. Yes.

A. Her stern was forward of the bow of the "Mikahala."

Q. So that, Captain, the "Arcona" was at least the "Mikahala's" [2822—1991] whole ship length farther away from the "Celtic Chief" than the "Mikahala" was? A. Yes.

Q. What is the length of the "Mikahala"?

A. 147.

Q. If the "Mikahala" was 147 feet and she had 500 feet between her and the "Celtic Chief," would not that mean that the "Arcona" was about 647 feet away from the "Celtic Chief"? A. Yes.

Q. Will you kindly explain, with a swell setting toward the "Celtic Chief" in the manner you have described, how the "Mikahala" swinging with her anchor to the swell would be in danger of striking the "Arcona"?

A. I said, the tide setting to the westward, the "Mikahala" would immediately swing around.

Q. How long does it take for the tide to gain its full height?

A. The tide that I spoke of is the current that is floating to the westward at times.

Q. Wasn't the swell coming with greater force than that current?

A. That I couldn't say. Might have been; maybe not.

Q. Don't you know that that current flows along the ledge of the reef?

A. I know the current flows from the entrance of

(Testimony of Albert Tullet.)

the channel clear down to Barber's Point towards westward.

Q. You don't know that the current flows parallel to the edge of the reef?

A. Yes, parallel to the edge of the reef.

Q. Now, then, do you mean to say that the position that the "Mikahala" was in with the swell running toward the "Celtic Chief" and the current running parallel with the reef, that it would have the tendency to throw the "Mikahala" toward the "Arcona"?

A. Because my anchor was ahead of the stern and dropped more toward the "Arcona."

Q. Wouldn't the swell have some influence?

A. The swell was—

Q. It was toward the "Celtic Chief"? [2823—1992]

A. The swell was about at right angles to the current. Both of them would be tending to set me from my anchor toward the "Arcona."

Q. Kindly show the points of the compass on this chart, on this Libellants' Exhibit "H."

A. All right, roughly only.

Q. As nearly as you can give it. It went southeast and west?

(Witness draws.)

Q. Now, then, have you drawn the compass?

A. Wait until I mark it.

(Witness marks.)

Q. Now, you've marked the points of the compass, north, east, south, and west by letters N., E., S., W.?

A. It's to be considered that it's approximate only.

Q. That's as near as you can make it?

A. Yes, sir, mere guesswork.

(Testimony of Albert Tullet.)

Q. Now, then, isn't it the fact, Captain, that the swell was running in a—what direction was it?

A. Southeast.

Q. In a southeast direction? A. Yes.

Q. And the current was running in what direction?

A. Westerly.

Q. Wouldn't the swell have a tendency to throw your vessel around somewhat? A. No, sir.

Q. Wasn't it striking the "Mikahala" on her star-board quarter?

A. It was not striking the "Mikahala" on the port bow.

Q. I mean the "Celtic Chief"? A. Yes, sir.

Q. Running to the northward? A. Yes.

Q. It was, wasn't it? A. To the northwest.

Q. The swell was running from the southeast to the northwest? A. Yes.

Q. Then it would have a tendency to throw the "Mikahala" to the northwest?

A. The tendency would be to run in conjunction with the swell. [2824—1993]

Q. I'm asking you what the tendency of that was.

A. That varies with the swell.

Q. What would be the effect of this westerly current?

A. The current would, no doubt, be the strongest.

Q. Didn't you say a few minutes ago it would not be the strongest? A. Yes.

Q. Why do you say now that the current would undoubtedly be the stronger?

A. What I do know is this, that between the current and the swell, it would tend to set me around on top of the "Arcona."

(Testimony of Albert Tullet.)

Q. Then the current was running from the northeast to the southwest, was it?

A. No, the current was running from the eastward to the westward.

Q. Have you approximately laid the anchor of the "Mikahala" with reference to the position of the "Arcona" on that chart? Is that approximately correct?

A. Well, the "Arcona," if it was measured mathematically, would probably be closer to the "Mikahala" and the "Mikahala" closer to the "Arcona." As I said when I drew this chart, I have only drawn it as regards the bearings of each vessel from the "Celtic Chief," the line of pull is what I mean to show. The line of pull with reference to the distance. I could draw a chart with actual distances if you wanted it and give me time to do it, but I should judge that the stern of the "Arcona" would come a few feet of the "Mikahala's" bow or the "Mikahala's" anchor would be about midships of the "Arcona."

Q. About how long do you think it would have taken the "Mikahala" to swing around up against the "Arcona"? A. That I couldn't state.

Q. Have no idea?

A. Well, I have an idea. I know a vessel swings very quickly to her anchor. Depends upon the force of the current.

Q. How many anchors had you on the "Mikahala" in December, 1909? A. Three. [2825—1994]

Q. And where were those anchors located?

A. One I used up and one down in the hole as a spare anchor.

(Testimony of Albert Tullet.)

Q. Down in the hole?

A. Yes, it's carried as a spare anchor in case anything goes wrong with any of the others.

Q. In any of these salvage operations that you have spoken of as having been a party to, did you observe any vessels towing on a ship ashore?

A. Besides my own vessel?

Q. Yes. A. Yes.

Q. You had your own vessel on there with other ships? A. Yes.

Q. In any of them did you observe any case where the line parted and became mixed up with the propeller of the towing vessel? A. Yes.

Q. Which one?

A. I have seen a line break. "Claudine's" hawser broke a few months ago up in Kohala.

Q. Towing on a vessel ashore?

A. No, the vessel was not ashore. She was just on the verge of towing the vessel out to sea.

Q. I'm asking you about salvage operations.

A. I misunderstood you.

Q. I referred to the various salvage operations that you were a party to and I asked if you saw in any of those operations any line break and become tangled in the propellor?

A. I don't remember at this moment.

Q. Wouldn't you have remembered it if you had seen it? A. I have a dim recollection.

Q. Were you on the "Claudine" at this time that you spoke of?

A. No, but I was close to her. I was within a hundred and fifty feet of her.

(Testimony of Albert Tullet.)

Q. Do you know whether or not the "Claudine's" line was a new line at that time?

A. It is—it was a brand new line.

Q. And it broke?

A. Yes, and got in the propeller.

Q. Where was it that you observed the lines of the "Helene" and [2826—1995] "Likelike" on Wednesday night? A. Where was it?

Q. Yes. A. From the bridge of the "Mikahala."

Q. And where did you see the lines? Where were the lines? What part of the lines did you see?

A. I saw the lines from the "Celtic Chief."

Q. You could see them at the bow of the "Celtic Chief"—I mean at the stern of the "Celtic Chief"?

A. Yes.

Q. You could see the "Likelike" also?

A. Yes.

Q. Do you know where that was made fast?

A. I know where the "Helene's" line—

Q. I'm asking about the "Likelike"?

A. No, I couldn't say where the "Likelike" entered.

Q. Do you know at what angle she was pulling, the "Likelike"? A. Do you mean what course?

Q. What angle with reference to the "Celtic Chief"?

A. She was the outside vessel, the one furthest to the westward.

Q. About how many points westward?

A. That would be hard for me to judge from my position because I was outside the ship in the opposite direction.

Q. You could see the "Likelike's" line plainly

(Testimony of Albert Tullet.)

from the bridge on Wednesday night after the search-light was put on? A. Yes.

Q. The "Helene's" also? A. Yes.

Q. And they were perfectly taut?

A. Perfectly taut.

Q. What do you mean by that?

A. I mean they were so tight that they looked like fiddle-strings.

Q. Straight out? A. Yes.

Q. Through the air? A. Yes.

Q. True of the "Mikahala's" lines also?

A. The "Mikahala's" lines were taut, [2287—1996]

Q. The same way?

A. No, not as taut as fiddle-strings.

Q. Why not?

A. I don't think our anchors had to hold in the same strain that the "Helene" and "Likelike" did.

Q. And you think that the "Helene" and the "Likelike" by means of their anchors were able to bring their lines out straight in the air like fiddle-strings? A. Yes.

Q. Do you know the size of those lines?

A. No, only from hearsay. I've never measured the lines.

Q. You know that they were manilla hawsers, don't you? A. Yes.

Q. And they had about, approximately how much line between the "Celtic Chief" and them?

A. I should judge that the "Likelike" had about the same as the "Mikahala"; probably 450 or 500 feet.

(Testimony of Albert Tullet.)

Q. And you think that it was possible for this vessel to get those lines taut in that fashion, manilla hawsers, without breaking them? A. Yes.

Q. They never touched in the water at all?

A. I wasn't watching them all the time; I didn't keep my eyes on them all the time.

Q. Never saw them on the top of the water?

A. No, sir.

Q. And that was true on Wednesday night after the search-light was put on? A. Yes, sir.

Q. Now, about the "Mikahala's" lines. Did they drop in the water at all?

A. Only when the sea mounted up and hit them.

Q. Would they be more out of the water or more in the water?

A. The "Mikahala's" lines were out of the water and the only time they touched the water was when the swell mounted up.

Q. That would only be occasionally?

A. That would only be occasionally.

Q. What is the horse-power of the "Mikahala"?

A. About 500. [2828—1997]

Q. And you think that the "Mikahala," by means of her propeller alone, could keep her hawsers, manilla hawsers such as those were, out of the water all of the time except when the swells would lift up and touch them? A. I'm sure of it.

Q. Towing on a fixed object?

A. Yes. Towing on a moving object, she could not do so.

Q. But she could do it on a fixed object?

A. Yes, sir.

(Testimony of Albert Tullet.)

Q. How large were the lines of the "Mikahala"?

A. Eight-inch.

Q. Both of them? A. Yes.

Q. Two eight-inch manilla hawsers? A. Yes.

Q. Approximately 450 or 500 feet of rope and she could keep both of those hawsers out of the water all of the time except when the swells would run up and touch them? A. Yes, sir.

Q. Do you know how much, how heavy an object a vessel such as the "Mikahala" could pull off a wharf by means of her propeller if it it were lying flat on a wharf?

A. No, I couldn't state how heavy an object she could pull off.

Q. You don't know? A. No, sir.

Q. You think she could pull off a three-ton object?

A. Yes, I do.

Q. What makes you think so?

A. Because I've pulled a heavier object than that off a sand beach.

Q. Without any wharf? A. Yes, sir.

Q. With a 500 horse-power vessel? A. Yes, sir.

Q. You think she could pull a 5-ton object off a wharf? A. I don't know.

Q. What was this object that you pulled off the sand beach? A. A boat-load of sand.

Q. High and dry? A. Yes. [2829—1998]

Q. Was the beach sloping or level?

A. The beach was a little sloping.

Q. Was the beach of hard substance or of soft sand? A. It was of soft sand.

Q. The "Mikahala" did it with a straight pull?

(Testimony of Albert Tullet.)

A. Yes, sir.

Q. Do you know how much sand there was in that boat? A. In a boat, one of my own boats.

Q. Do you know how much sand there was in the boat?

A. Yes, I should judge there was probably about three or four ton. The boat itself would weigh about a ton.

Q. Well, then, in your opinion the "Mikahala" could pull a five-ton object off a wharf in that way?

A. I don't know. It would depend upon what the object was and it would depend upon what kind of surface she was going to pull it over.

Q. Well, we'll say ordinary smooth surface.

A. I think I could pull a five-ton off an ordinary smooth surface if the object were being pulled with the ——— of the boat.

Q. How many propellers has the "Mikahala," or had it in December, 1909? A. One.

Q. Do you know the diameter of the propeller?

A. I couldn't give you that now. I think it is about nine feet.

Q. Know the pitch?

A. I think the pitch is about 13.

Q. Will you kindly ascertain both of those facts?

A. I will.

Q. What was the indicated horse-power of the "Mikahala" at that time?

A. As I stated before, about 500, as far as I know.

Q. Do you know anything about the engines themselves? A. No, sir.

Q. You do not? A. No, sir.

(Testimony of Albert Tullet.)

Q. What's the name of your engineer at that time?

A. Mr. Christiansen. [2830—1999]

Q. Is he in Honolulu? A. Yes, sir.

Q. Do you know anything about the engine pressure? A. No, sir.

Q. You remember distinctly, do you, that the tide was high when the "Arcona" put her first line on board and broke it?

A. I remember it was high tide at noon that *do*.

Q. And it was about that time that she broke her line? A. Yes.

Q. So that she was not making a pull then at the time when she broke her line when the tide was low?

A. No.

Q. When did you first notice that the "Celtic Chief" was beginning to move seaward?

A. Quarter to twelve.

Q. How did you happen to note the time?

A. Because I had my watch in my pocket.

Q. And what did you see that lead you to the conclusion that she was moving?

A. I had the bearings of lights ashore.

Q. What were those bearings?

A. Bearings of two objects, two lights.

Q. Two lights? A. Yes.

Q. And where were those lights?

A. Towards the seaward, towards Diamond Head.

Q. About how far from you?

A. About how far, I couldn't say, that because it was night-time. I simply picked out two objects from which to guide me.

Q. Both of them were ashore? A. Yes.

(Testimony of Albert Tullet.)

Q. Approximately how far was the farthest?

A. May have been a mile or may have been five miles.

Q. That the closest you can give?

A. It wouldn't have been less than a mile.

Q. How far do you think the "Celtic Chief" moved the first time she moved?

A. That I couldn't state.

Q. Have you no idea?

A. Not in regard to the ship. I know the gap closed up between those two lights.

Q. When you saw this at quarter to twelve you said she moved first and then she stopped and then moved again? I want to know how [2831—2000] much you think, judging from this closing of the gap, that she had moved the first time?

A. Well, I couldn't say because I'm not in a position to say, to figure those two intervals that these two lines would tell me the ship moved.

Q. So you have no idea? A. No, sir.

Q. Now, when these twelve or fourteen-foot swells would come along and strike the "Mikahala" on her port bow, would they have any effect on the "Mikahala" at all? A. Nothing more than raise her up.

Q. Wouldn't have a tendency to throw her toward the "Celtic Chief"?

A. The swells didn't have force enough out there. It was when the swells began to gather their force in coming in shallow water.

Q. Didn't you notice that your lines would sag at times?

A. I noticed the swells would raise the lines.

(Testimony of Albert Tullet.)

Q. I'm asking you if you didn't notice that your lines would sag at times? A. No, sir.

Q. You are sure they did not?

A. I'm sure if there hadn't been any swell that the line wouldn't have touched the water.

Q. Are you prepared to say that those swells didn't so much as move the "Mikahala" a foot or five feet one way or the other?

A. No, I'm not prepared to say that.

Q. It might? A. It might.

Q. And might not that have been responsible for this variation?

A. Oh, no, the variation was too great for that and the variation was too constant. If it had been one point the "Mikahala" moved the gap would open again.

Q. Which was it, opening or closing?

A. Closing.

Q. How long did this closing go on?

A. It began to close up and then it stopped.

Q. How long?

A. I couldn't state the time. I [2832—2001] was too busily engaged.

Q. You have no idea whether it was a minute? You weren't watching your range lights very well?

A. Yes, I was watching my range lights.

Q. How long did you watch them?

A. Watching them all the time, same time watching the ship. I made a remark to Captain Piltz that the ship was moving, "She's coming."

Q. I have no doubt you noticed the variation.

A. And it was that that caused me to heave my anchor up.

(Testimony of Albert Tullet.)

Q. It was Captain Piltz that you made that remark to?

A. That the ship was coming, yes. He was on board the ship then. He had been on board from half-past eleven.

Q. Where was Captain Piltz at the time?

A. On the bridge.

Q. Now, how soon was it after a quarter to twelve before the "Mikahala" was actually afloat for the first time?

A. The "Mikahala" was afloat all the time.

Q. I mean the "Celtic Chief"?

A. I couldn't name the exact time.

Q. How long do you think?

A. I know it was from quarter to twelve to twenty past twelve when our hawser was cut.

Q. You know your hawser was cut after the "Celtic Chief" was afloat? A. Yes.

Q. Do you know how long after?

A. I couldn't say.

Q. Have no idea?

A. I knew it was within a half an hour.

Q. That is the closest you can come to it?

A. I could come nearer to it.

Q. How much nearer?

A. From the time the ship was afloat until my hawser was cut?

Q. Yes.

A. It might have been ten minutes, it might have been more or less. I wouldn't confine myself to any special time. [2833—2002]

Q. When the "Celtic Chief" came off you said she

(Testimony of Albert Tullet.)

headed directly for the "Arcona"?

A. Yes, that is, stern first.

Q. And you also say that she came within twenty feet of her? A. Yes, sir.

Q. According to your judgment?

A. From my position on the bridge.

Q. That is, if she had gone twenty feet further she would bump into the "Arcona"? A. Yes.

Q. And then the "Arcona" began to move?

A. Yes.

Q. And you still maintain, do you, that the "Arcona" pulled the "Celtic Chief" out or ahead?

A. I certainly do.

Q. She kept going directly astern and kept on until within twenty feet and then the "Arcona" began to move.

A. I don't claim that the "Celtic Chief" was directly in line with the "Arcona" when the gap was closed up. She might have moved fifty feet off and I wouldn't be able to see from my position.

Q. Didn't you say just a few moments ago if the "Arcona" hadn't begun to move, according to your judgment, the "Celtic Chief" would have bumped into the "Arcona"?

A. If the "Mikahala" hadn't towed her away.

Q. That was what you said?

A. That's what I intended.

Q. Didn't you say that the "Celtic Chief" came off headed directly for the "Arcona," kept on until she came within twenty feet of her and then the "Arcona" began to move?

A. I said until she closed the gap within twenty feet.

(Testimony of Albert Tullet.)

Q. And you said if the "Arcona" hadn't begun to move she would have been bumped by the "Celtic Chief"? A. I don't know whether she would.

Q. You mean to say that wouldn't have happened?

A. What I meant to say, if the "Mikahala" hadn't pulled her clear and took her sternway, there would have been a collision. I'm sure of that. [2834—2003]

Q. When you referred to the height of the swells being twelve feet or fourteen feet or sixteen feet, do you mean the height from the sea level, the ordinary sea level? A. Yes.

Q. To the top of the swell? A. Yes.

Q. So that the boats taking cargo alongside of the "Celtic Chief" were rising *a* falling from twelve to sixteen feet? A. Yes, sir.

Q. That was on Wednesday?

A. Well, it may have been on the other days too.

Q. Also on Tuesday?

A. Remember we were lightering, during the times we were lightering the cargo. I couldn't state positively what times they were.

Q. The swell would have been very decidedly less on the port of the "Mikahala" than on the starboard side?

A. It would have been less, at the same time I don't know how much.

Q. The swell wouldn't rise as much, would it, on the port side of the "Celtic Chief" as on the starboard side? A. No.

Q. In other words, the action of the water wouldn't be so violent and the rise and fall not so great?

(Testimony of Albert Tullet.)

A. No.

Q. How did the "Helene's" boats come alongside of the "Celtic Chief," on the starboard side?

A. I think the "Helene's" boats took freight from the port side.

Q. Didn't you state on direct that the "Helene's" boats also took cargo from the starboard side?

A. When they were working the cargo?

Q. That is what you mean when you said the "Helene's" boats were working on the starboard side? A. That's what I said.

Q. Would it have been possible for the "Mikahala's" boats to go on the port side?

A. It would have been possible, yes, but it would have been impracticable. It was greater danger. [2835—2004]

Q. It would take more time, too?

A. It would take more time and also would be more dangerous.

Q. Will you kindly explain how it would be more dangerous for them to go to the port side?

A. Because there would be danger of the boat getting swamped from the line breaking and also the boats would have to pull against the swells to go back to the port side.

Q. The boats had to pull against the swell to go to the "Mikahala"?

A. The swells had no force out there.

Q. The boats would have to steer against the reef in going to the "Mikahala"?

A. There was no risk.

Q. Didn't you say that the swells were breaking out ahead of the "Celtic Chief"? A. Yes.

(Testimony of Albert Tullet.)

Q. How far ahead?

A. From the ship on; one broke abreast of the fore hatch. It was probably fifty feet from the stern or the ship.

Q. Don't you know that those swells reduced in size? A. I also know—

Q. Don't you know that?

A. Yes, I do. That is, after they have broken they reduce in size. The swells are far more dangerous when they're breaking than they are simply as swells.

Q. None of these photographs that you have here show any swells breaking?

A. No, I only saw from observation one break alongside the ship.

Q. I direct your attention to these various photographs and ask you whether or not there are any of the swells breaking around, in any of these, in the vicinity of the "Celtic Chief"?

A. No, I don't see any. This one looks as if it's going to break. (Pointing to exhibit.)

Q. Did you see any other swells break there alongside of the "Celtic Chief" or out ahead of it than the one that you have referred to?

A. I saw them break ahead.

Q. How many? A. Plenty. [2836—2005]

Q. A number of them? A. Yes.

Q. You didn't take any photographs showing any of the breaking swells? A. No, sir.

Q. Carefully avoided those?

A. I didn't particularly avoid those. They didn't happen to be breaking when I took the pictures. For

(Testimony of Albert Tullet.)

the same reason I didn't get the biggest swells in the picture either.

Q. How often did you observe that the "Celtic Chief" moved just before coming off and stopped and moved again? How many times did she move in this way?

A. Several times, but I couldn't state the number.

Q. You don't know? A. No.

Q. But you did notice that she stopped and moved again several times? A. Yes, sir.

Q. And the first one began at fifteen minutes to twelve? A. Yes, sir.

Mr. OLSON.—That's all except for these points as to the "Mikahala's" indicated horse-power, pitch, diameter of propeller, gauge pressure, and so forth.

Mr. WARREN.—As to those I will say that we expect to show those by another witness.

The WITNESS.—I'd like to state also, if I may, that I haven't any actual knowledge that the "Mikahala's" horse-power is 500, only from hearsay from the engineer. I have no means of determining of my own knowledge.

Mr. OLSON.—Then, on counsel's agreement to produce this data, take the witness, Mr. Weaver.

Mr. WEAVER.—If your Honor please, I have some cross-examination.

The COURT.—Adjourn court to to-morrow morning at ten o'clock. [2837—2006]

[**Testimony of George E. Piltz, for Libelants (Cross-examination).**]

Continuation of Cross-examination of PILTZ.

Wednesday, October 18, 1911.

Mr. OLSON.—Do you remember Captain Tullet making any remarks to you, Captain Piltz, when the “Celtic Chief” first began to move, and remark to you that the “Celtic Chief” was moving?

A. Yes, sir.

Q. You remember that? A. Yes.

Q. That was the first time that you noticed that she was moving? A. Yes, sir.

Q. And you were able to determine that she was moving by looking at the range lights; is that right?

A. He spoke to me and I immediately noticed that the range lights or the ranges that I had taken were altered.

Q. Do you remember how long you had been on board of the “Mikahala” when you noticed that movement for the first time?

A. Not over, I should say, about five or ten minutes.

Q. Five or ten minutes? A. Or less.

Q. You say that was about a quarter to twelve?

A. Somewhere in that neighborhood.

Q. Well, do you remember if you had the same range lights as Captain Tullet?

A. I don't know. I didn't know his range lights.

Q. You had range lights of your own. Up to that time the only motion of the “Celtic Chief” that you observed was this up and down motion showing her bumping or knocking, that she was bumping once in

(Testimony of George E. Piltz.)

a while? A. Yes, sir.

Q. You didn't even notice any movement on board of the "Celtic Chief" herself coming toward the sea? You were able to determine it only by lights that she was coming? A. Yes, sir.

Q. I believe you said, Captain Piltz, that you were not able to see the "Helene's"—I mean the "Likelike's"—line after [2838—2007] dark of Wednesday night; is that correct?

A. I could see them every time that I went to the rail and looked at the lines or looked to the position of the boat working close to the lines.

Q. That was while you were on the "Celtic Chief"?

A. While I was on the "Celtic Chief."

Q. Could you see the "Likelike's" line after you got aboard the "Mikahala" Wednesday night?

A. I never had any occasion to look at it.

Q. What?

A. I never had any occasion to look at it and consequently I did not see it or notice it.

Q. Did you see the "Helene's" line?

A. I don't remember if I could or not. Never looked that way.

Q. Do you remember seeing any other lines after you got aboard the "Mikahala" or were you too busy with your work on the boat to notice the lines?

A. I was too busy.

Mr. WARREN.—It seems to me, your Honor, that is going over old ground.

A. I was too busy attending to my work to notice any lines outside of our own.

Mr. OLSON.—That's all.

(Testimony of George E. Piltz.)

Cross-examination of Captain PILTZ on Behalf of
Miller Salvage Co., Libellants Herein.

Mr. WEAVER.—Captain, where did the “Celtic Chief” and “Arcona” lines come aboard on the starboard side of the “Celtic Chief”?

A. Midship chock.

Q. And were they connected with the mainmast?

A. Attached to the mainmast.

Q. How high were they above the deck?

A. Well, I don't exactly know the height, but I should judge [2839—2008] about eighteen inches.

Q. Were they taut up to the time you left?

A. Well, they appeared to be taut.

Q. Now, where they went through the chock, how high were they above the deck? You said they were eighteen inches above the deck. Were they eighteen inches where they went through the chock?

A. All the way across.

Q. Then the lower part of the chock whole is about eighteen inches above the deck; is that right?

A. I judge about that.

Q. Did you notice a shackle connecting the hawser of the Miller Salvage Co.'s lines with a steel cable on the Miller Salvage Co.'s line? A. No, sir.

Q. Did you notice whether or not the steel cable on the Miller Salvage Co.'s anchor was also connected with a hawser before it reached the vessel, “Celtic Chief”?

A. I did not notice anything to be able to tell if they had shackles or was attached to a line to a wire hawser.

Q. You don't know whether the lines, then, were straight or appeared to have a strain on them aft of

(Testimony of George E. Piltz.)

the "Celtic Chief"? A. Repeat that question.

Q. Do you know whether or not this line to the Miller Salvage anchor had any strain on it aft of the "Celtic Chief"? Did you notice that?

A. No, sir, I did not notice.

Q. You didn't notice whether it had a side-runner in it when you left or whether it was straight?

A. No, sir.

Q. Was the purchase-tackle of the Miller Salvage Co. line underneath or above this line that crossed the deck from the starboard, port chock of the "Celtic Chief" and ran toward the "Arcona"?

A. You've got that mixed up.

Mr. OLSON.—Read that. (Question read.)

A. The purchase-tackles were above or over.
[2840—2009]

Q. You are sure of that, are you? A. Yes.

Q. Do you know how much above they were?

A. Well, I didn't notice; it was exactly on the wire cable or it was above or clear of it.

Q. You don't know whether it was resting on it or not? A. No.

Q. At the time you left, I believe you testified that you noticed the Miller Salvage Co. tackles near the break of the poop were very close to the main deck, lying down and you could step over them?

A. That was abreast of the main hatch.

Q. Abreast of the mainmast or main hatch?

A. The main hatch, the mainmast as on the fore part of the main hatch. I noticed there that the lines were close to the deck. I was able to step over them.

Q. And didn't you notice that they were hanging

(Testimony of George E. Piltz.)

then, hanging on the "Arcona" lines which crossed the deck?

A. I did not observe that they were or stop to look.

Q. Now, didn't you notice that the Miller Salvage Co. lines were underneath that line crossing the deck, the "Arcona" line crossing the deck?

A. I noticed. In fact, I noticed that in fact they were not underneath.

Q. You are sure of that?

A. Yes, absolutely sure.

Q. Then, how far was it from the mainmast to the break of the poop?

A. Oh, I don't know the exact distance.

Q. How far would you say?

A. Oh, about fifty feet. Somewheres in that neighborhood.

Q. And how far forward of this mainmast was that purchase made fast?

A. How far forward of which?

Q. Of the mainmast.

A. I don't know the exact distance. [2841—2010]

Q. Give us your approximate distance.

A. It was fast to the bitts on the forward deck, on the fore part of the foremast. Somewheres in that neighborhood.

Q. About how many feet forward?

A. Oh, I hate to give any distance because I am unable.

Q. Can't you say whether it was over or under thirty feet or forty feet?

A. It may have been sixty feet somewheres in that neighborhood. Fifty or sixty feet.

Q. Was this place where you stepped over the line

(Testimony of George E. Piltz.)

abreast of the main hatch forward of this mainmast where the "Arcona" line crossed the deck?

A. Yes, sir.

Q. And about how far forward of that line was the point you indicate as the place you stepped over?

A. Oh, from six to eight feet.

Q. Did you notice when you stepped over them whether or not there was any strain on them or not?

Mr. WARREN.—At what time?

Q. At the time you stepped over them?

A. At any and all times I stepped over them I never noticed they were taut.

Q. Did you make a test by stepping on them with your foot or something like that?

A. There was always a very light spring on the lines every time I stepped over them.

Q. Did you step on them? A. Yes.

Q. You made a test?

A. Yes, I stepped over them.

Q. Stepped on them? A. On them.

Q. What did you find? A. They were slack.

Q. How many times did you do this?

A. I don't exactly know, but all of a half a dozen times.

Q. That was up to the time you left the ship?

A. Yes, sir.

Q. Were they at all times slack? [2842—2011]

A. Yes.

Q. Did you notice any men working on the capstan forward? A. No, sir.

Q. Weren't any men working?

A. I didn't notice or didn't see.

Q. Did you say they were or were not or you don't

(Testimony of George E. Piltz.)

know, which is it? A. I don't know.

Q. Do you know whether or not there was any slack being taken up on these purchases?

A. I don't know.

Q. Didn't notice that. How high was the deck of the poop above the main deck at the break of the poop?

A. About eight feet, in my judgment, probably more.

Q. Well, it was high enough to clear a man's head to walk underneath? A. Yes.

Q. A man six feet high could walk under that?

A. It was all of ten feet high.

Q. Do you know how high those Miller tackles were twenty-five feet aft of the poop, forward of the poop at the time you left? A. No, sir.

Q. You are only prepared to state how high they were abreast of the main hatch? A. Yes, sir.

Q. And then you did make tests more than once?

A. Well, I did not make tests to ascertain if they were taut or not. As I say, every time I stepped over them I noticed they were slack.

Q. Isn't stepping on a line a test?

A. It would be if you went there for the purpose of testing them. In this case I didn't go there for the purpose of seeing, learning if they were taut or not. As I say, every time I stepped over them I would have noticed that they were taut.

Q. Didn't you testify a few minutes ago that you had stepped on them and found that they were slack?

A. I did. From the time I was performing my duties in attending [2843—2012] to the loading of the boats.

(Testimony of George E. Piltz.)

Q. Didn't that naturally mean an accurate observation that they were slack or they were taut?

A. Yes.

Q. Then it was a test in that respect?

A. It was a test while performing my own business.

Q. Well, how slack were they?

A. Well, I am unable to state.

Q. Was there any strain on them at all?

A. Well, there may have been a strain on them but where I stepped over them they seemed to sag.

Q. What one did you step on, the main tackle, the first or second tackle? A. I am unable to state.

Q. May have been all of them or not all?

A. May have been all of them.

Q. Are you prepared to say that all three were slack?

A. No, sir, I am prepared to say the ones—I don't know how many they had there.

Q. You don't know that there were three?

A. No, sir, I did not stop to count.

Q. You don't recollect anything about the number of tackles? A. No, sir.

Q. Now, when did this second red light go up on the night of Wednesday in regard to your coming off the ship back to the "Mikahala"?

A. I don't exactly remember, but I think it was ten o'clock. Somewheres in that neighborhood.

Q. What is your idea now?

A. Well, in my last testimony my recollection is about ten o'clock.

Q. You still have that idea?

A. Yes, sir, I haven't heard anything to the contrary or know anything to the contrary.

(Testimony of George E. Piltz.)

Q. And did you consider it good practice to begin to pull on a vessel four hours before high tide in a case where the tide will be one foot and seven-tenths high at [2844—2013] high tide and the tide is rising? A. Repeat that question again.

(Question read.)

A. Yes, sir, I do.

Q. Did you see the second red light go up?

A. I didn't see when it went up at the time, it went up, but I noticed about ten o'clock there were two there. Maybe it was some time after ten.

Q. Do you know what that was a signal for?

A. Well, it was to make a united effort to pull the vessel off or to use all power that was available in the ships to pull on the "Celtic Chief."

Q. And from that time on the "Mikahala" was pulling? A. Yes, sir.

Q. Did that—then you are prepared to deny the fact, deny it to be a fact that the red light went up just before the "Celtic Chief" began to move off the reef?

Mr. WARREN.—One moment; I have just again been going through my notes. I find this has been gone through exhaustively by Mr. Weaver on cross-examination.

Mr. WEAVER.—I guess that's all.

Redirect Examination of GEO. PILTZ on Behalf of
Libellees Inter-Island Steam Navigation Co. and
Matson Navigation Co.

Mr. WARREN.—Q. Captain, you remember that Mr. Olson questioned you as to why the "Mikahala" chose to remain in the position she was in in view

(Testimony of George E. Piltz.)

of the fact and of your belief that if the "Arcona" had pulled on her lines she would have come over and her lines or herself would have fouled the "Mikahala" and why under those conditions your vessel remained there, and in view of the fact also that the "Arcona" was the more powerful [2845—2014] vessel. I want to ask you if you know whether or not any request or information of any kind was made or given by the "Arcona," as far as you know, that the "Mikahala" should go over.

Mr. OLSON.—I object to the question on the ground it isn't proper redirect; furthermore, on the ground it is incompetent, irrelevant, and immaterial.

The COURT.—I sustain the objection.

Mr. WARREN.—On cross-examination, Captain, in answer to a question of counsel relative to the operations of the "Arcona" in attempting to run a large hawser from the "Arcona" to the "Celtic Chief," you stated that they were not conducting those operations properly in order to get that cable on. I'll ask you what, in your judgment, would have been a proper and seamanlike way for the "Arcona" to have conducted that operation to bring that hawser on board.

Mr. OLSON.—I object to the question on the ground that it's not proper redirect examination.

The COURT.—Isn't it material?

Mr. OLSON.—Absolutely immaterial and I also object on that ground.

The COURT.—I sustain the objection.

Q. On cross-examination, Captain, you were asked whether it doesn't, as a matter of fact, sometimes

(Testimony of George E. Piltz.)

happen that when the shore boats are taking freight from an Inter-Island vessel off ordinary coasts, we'll say the Hamakua coast or some place, doesn't it sometimes happen that a sling will strike a man in loading the boats to which, when you endeavored, when you answered, endeavored to answer, [2846—2015] as I recollect, how frequently that happened. You were instructed that an answer of yes or no should be given, to which you said, "Yes, it sometimes happened." Captain, I want to ask you how frequently it will happen that sling loads will strike men in loading boats in shore as compared with number of times.

Mr. OLSON.—I object to the question on the ground it has been gone over.

The COURT.—I allow a question along that line.

Mr. WARREN.—I'll withdraw that and frame it a little different. Captain, on cross-examination you having testified that it sometimes happens that a sling will strike a man in the boats while unloading off Island coasts. I'll ask you what is the relative frequency and the danger of slings striking men operating out that way as compared with their striking men operating at the "Celtic Chief."

Mr. OLSON.—I object to the question unless it appears that this witness knows even approximately the men that were struck by slings out at the "Celtic Chief."

The COURT.—I will allow a question along that line, but I don't quite see how you are going to compare the two.

Mr. OLSON.—I object to the question further on

(Testimony of George E. Piltz.)

the ground it is incompetent, irrelevant, and immaterial.

Mr. WARREN.—I wish the record to show that I state as my ground in insisting on my right to put this question, is that counsel has endeavored on cross-examination, to meet the statement of this witness that these boats operated under dangerous conditions at the "Celtic Chief," that the boats and the men are, as a matter of fact, accustomed to operate under conditions where swells and other conditions were as real a danger in the general island trade that is constantly carried on by these steamers, and having attempted [2847—2016] to draw that parallel it is my right to go further into the parallel question of the danger between those operations and those to show how frequently the—

Mr. OLSON.—I object to the offer of proof on the ground—

The COURT.—I allow the question.

A. In loading the boats in the Inter-Island, why, they would be both in deep water and, naturally, the boat would not have as much surging and bouncing as they would in shallow water, which was the case at the "Celtic Chief" and also the "Celtic Chief's" working over the ——— of the "Celtic Chief" was stationary, whereas in the island trade the burthen is attached to the winch and where you see the sling approaching a man you have a chance of hoisting it and dropping it in the proper position at the boat, whereas in the "Celtic Chief" operations you was unable to do that, and that is the reply why it is more

(Testimony of George E. Piltz.)

difficult at the "Celtic Chief" than it is at the Inter-Island boats.

Q. Now, Captain, you haven't answered my question though as to the relative frequency of men being struck at those operations according to your own experience. That is, with your knowledge of the situation of the "Celtic Chief" and your experience with the island trade, how often have you seen men struck?

A. Probably once in two weeks or once in three weeks, whereas out here one or two get struck in this operation the first two days.

Mr. WARREN.—That's all.

Mr. OLSON.—I have no questions further.

Mr. WEAVER.—No further questions.

In the matter of the reading of the deposition of John W. McAllister, a witness in the above-entitled cause, called on behalf of [2848—2017] libelant, Matson Navigation Co.

Mr. OLSON.—I move to strike that answer on the ground it is not the best evidence. "She was a passenger boat and had to carry the mail." I now refer to page 13 of the deposition of John W. McAllister, the answer in response to the question, "How did the 'Mauna Kea' happen to leave?" "She was a passenger boat and had to carry the mail." My motion is to strike the latter half of that evidence, "and had to carry mail," as not the best evidence.

Mr. WARREN.—I object to the motion to strike, your Honor, on the ground that it certainly is within the common knowledge of everybody here.

The COURT.—I'll grant the motion.

(Testimony of Martin Christiansen.)

Mr. WARREN.—As to what?

The COURT.—As to the latter part, "she had to carry mail."

(Entire deposition read.)

Mr. WARREN.—The depositions were taken under stipulations. I offer them in evidence, your Honor.

The COURT.—They may be received in evidence.

Mr. OLSON.—Subject to the part stricken by my motion.

Recess.

[Testimony of Martin Christiansen, for Libelants.]

Direct examination of MARTIN CHRISTIANSEN, a witness called on behalf of libellants Inter-Island Steam Navigation Co. and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. Mr. Christiansen, did you have any connection with the Inter-Island steamer "Mikahala" the day that the "Celtic Chief" was ashore and pulled off the reef, December, 1909?

A. I did.

Q. What was your position on the vessel?

A. First Assistant Engineer.

Q. What time did you go on duty Wednesday night? [2849—2018] A. Twelve o'clock.

Q. Is that the time you went in the engine-room? Whose watch was it prior to that time?

A. The chief's watch.

Q. And on going in did you have any—what was the condition of the "Mikahala's" engines at that time? A. The engine was going at full speed.

Q. How do you know that?

(Testimony of Martin Christiansen.)

A. I examined the engine and saw that the throttle was open and looking on the steam saw it had the proper amount of pressure on the engine.

Q. You saw that on going in? A. Yes.

Q. How long did the engine continue with no change of throttle after that?

A. How long she continued full speed?

Q. Just before you answer that, what have you there, Mr. Christiansen? A. Copy of the bells.

Q. When was that made?

A. On December 9, 1909.

Q. By whom? A. Myself.

Q. From what? A. From the log slate.

Q. From the log slate? A. Yes.

Q. Who made the entries on the log slate?

A. I did; after twelve o'clock, of course.

Q. What is the—how are the bells noted in the engine-room in the ordinary course?

A. Take it—we have an engine-room clock, look at the time and note it down.

Q. On what? A. On a log slate.

Q. On a slate? A. On a slate.

Q. Use a slate pencil? A. Yes.

Q. You made those entries as you received the bells? A. Yes.

Q. During that watch. And how long did those notes remain on that slate?

A. Till afternoon of the following day.

Q. Then what happened?

A. I think as soon as the chief was through copying them off then the slate is cleaned off and sent down. [2850—2019]

(Testimony of Martin Christiansen.)

Q. That slate remains in the engine-room?

A. Remains in the engine-room.

Q. So that the slate itself is not preserved as a record? A. No, no.

Q. These notes that you have here you say you copied from that slate? A. Yes.

Q. And did you compare those with the slate when you copied them, carefully?

A. I naturally took them off the slate, yes.

Q. And you've had these in your possession ever since? A. Yes.

Q. Now, I will ask you if you can, independently of that paper, tell the changes of speed and the bells in the operation of your engine that night.

A. You mean the change in the speed of the engine between bells? Not very well between bells.

Q. Can you remember the intervals between the bells and the hour and minute that the different bells were given without that paper? A. No.

Q. Now, I will ask you—

A. That's why I note them down, because there's so many given.

Q. Referring to that paper made by you as you've stated, will you tell me how long the "Mikahala's" engine continued to run at full speed after twelve o'clock?

Mr. OLSON.—Now, I object to that unless it appears that the witness' memory is refreshed by reference from that paper and if it is not, he cannot very well state that the paper is correct. Let the paper be offered in evidence.

Q. Can you now, by reading that paper, have re-

(Testimony of Martin Christiansen.)

called to your mind, does that paper recall to your mind so that you remember the time the length of time that the bell continued? You cannot?

A. No, I wouldn't be positive on any point of that slate. It is almost impossible to handle an engine—

Q. This signature is whose at the bottom of this paper? [2851—2020] A. Mine.

Q. Your own?

Mr. OLSON.—I'd like to ask a question or two before he's permitted to testify with reference to this.

Mr. WARREN.—All right.

Mr. OLSON.—Q. Mr. Christiansen, did you make these notes on the slate yourself in the engine-room?

A. Yes.

Q. As you received the bells? A. Yes.

Q. You did? Now, did you copy off the notes on that slate on to this piece of paper yourself?

A. Yes.

Q. The chief didn't have anything to do with the copying of this? A. He copies his own.

Q. You simply copy your notes?

A. Yes. He copies mine also, but I don't copy his.

Q. Why did you take this copy?

A. Well, for self-protection.

Q. This was not taken for the purpose of making entries in a log? A. Certainly.

Q. When did you take this copy?

A. On this paper?

Q. Yes.

A. The following morning. The notes were still on the slate.

Mr. OLSON.—That's all.

(Testimony of Martin Christiansen.)

Mr. WARREN.—I'd like to offer this in evidence, your Honor, as a copy of the times and speeds of the engine of the "Mikahala" from twelve P. M. on. This covers further times in which we are not interest but that's all I want. This covers in full the operations while pulling on the vessel and the operations of the "Mikahala" in going back to the wharf.

Mr. OLSON.—I agree that the notes from this memorandum be read into the record.

Mr. WARREN.—In evidence you mean?

Mr. OLSON.—Yes. [2852—2021]

Mr. WARREN.—That's agreeable, Mr. Weaver?

Mr. WEAVER.—Yes.

Mr. WARREN.—I then read from this paper produced by the witness: "December 9, 1909, A. M. Bells from bridge to engine-room, S. S. 'Mikahala.' Engines going full speed ahead, 12:22; slow, 12:23; full ahead, 12:25; stop, 12:27; slow ahead, and stop, 12:28."

Q. Referring now to this record showing the first change after twelve M. or twelve midnight to have been at 12:22 A. M., I'll ask you if during this interval between 12 and 12:22 there was any change in the engines as to its speed irrespective of any change of throttle? Will you answer so the reporter can hear?

A. If there was any change? Yes, there was a slight change.

Q. What was that change?

A. Why, the engine going a little faster.

Q. By going faster, what do you mean?

A. Why, making more revolutions.

(Testimony of Martin Christiansen.)

Q. About how much faster would you say her revolutions increased?

A. Well, I couldn't say as to that. There is no indicator there. We go in an engine-room by sound. When a thing stopped, if we want to find out what the cause of it is and finding no cause in the engine-room we know there must be some outward cause.

Q. If an engine, as in this case the engine of the "Mikahala," is going on open throttle at full speed and without any chance of throttle, the engine goes faster, revolves faster, and the revolutions increase, do you know what that indicates, so far as the propeller is concerned?

A. If the ship is going at full speed at the time, yes.

Q. Well, now, answer that, please.

A. If the ship is going full speed through the water and the revolutions of the engines increase, why you're striking another current.

Q. Striking what?

A. A different current. For instance, you enter a ——— or go over a bar or something of [2853—2022] that sort, you strike a different current, you go against a current your resistance against the propeller will be less.

Q. That is going with a current. A. Yes.

Q. And in the absence of any current with the pulling vessel, the engine of the pulling vessel increasing her revolutions, she going full speed attached to a stationary object, what does that indicate?

A. Something has got to move, either the boat is pulling or being pulled.

(Testimony of Martin Christiansen.)

Q. Either what?

A. Either the boat is pulling or being pulled. If the object previously stationary should move, you would naturally increase your revolutions.

Q. Why?

A. Because you are going through the water.

Q. Do you know what is the meaning of the term, slip of a propeller? A. I do.

Q. Will you define that, please?

A. A propeller is like turning a thing on a belt, pulleys. The thing goes ahead fast according to the strain on the object, whereas a propeller that is made fast on the ship or a steamer, it goes through and the matter is not solid. When it moves you see, naturally, it shoves that boat away instead of advancing itself. It's got to shove it away. That's what is called slip; it slips, it does no work. It does the work but it doesn't do the same as if the line is let go.

Q. Now, if a vessel is towing upon a stationary object, her propeller and engines going at full speed and yet the vessel itself not moving through the water, how much slip would you say there would be to the propeller?

A. Well, in that case it's practically all slip. You are not going through taking it, you are not going through the water. You are pushing so much the further away and pulling with your wheel is all slipping.

Q. What is the relative difference between revolutions of the [2854—2023] engine and slip of the propeller. How, do they vary in respect to each other?

(Testimony of Martin Christiansen.)

A. Well, according to conditions, as I've just stated now.

Q. For instance, if slip increased, the revolutions increase or decrease. If the slip increases, I withdraw that. If slipping decreases with the revolutions increase or decrease?

A. Oh, they will increase.

Q. In what proportion?

A. Well, that is a condition hard to determine.

Q. Did you say increase is hard to determine? What is the answer? (Answer read.) So that if between twelve o'clock midnight and 12:22 the revolutions of the "Mikahala's" engine increased without any change of the propeller at all, of the throttle, will you state what causes would contribute or permit that condition to take place?

A. Either the object that you are pulling on is coming towards you or they are moving or slacking off their line on the ship. That would leave this object remain stationary. If you slacked the line you would naturally change your slip at that minute and your engine would speed up.

Q. What would it indicate as to the pulling engine itself, in this case, of the "Mikahala," as to her motion.

Mr. OLSON.—I'll admit that she was going forward through the water.

Mr. WARREN.—That's all.

Cross-examination of M. CHRISTIANSEN.

Mr. OLSON.—Q. Mr. Christiansen—

Mr. WARREN.—One moment. I'd like to ask him if it is material.

(Testimony of Martin Christiansen.)

A. It's really not material.

Mr. OLSON.—Q. Mr. Christiansen, when you came into the engine-room was the [2855—2024] "Celtic Chief" as yet afloat?

A. I couldn't say.

Q. What? A. I couldn't say.

Q. Was the "Mikahala" going forward through the water?

A. I couldn't say that either. I was in the engine-room.

Q. You don't know? A. No.

Q. Where were you immediately before going to the engine-room? A. In my room.

Q. Didn't you look at all outside of the vessel?

A. We go right from the room into the engine-room.

Q. So you have no idea whether the "Mikahala" was stationary or moving at that time? A. No.

Q. How many revolutions per minute was your engine making at the time that you came into the engine-room?

A. Well, I wouldn't say exactly but I should—

Q. What is that?

A. I couldn't say exactly.

Q. Let us have it as near as you can give it.

A. I should judge under those conditions, going full speed, she'd probably make sixty-five revolutions per minute.

Q. Sixty-five revolutions?

A. Yes, when the vessel is being towed. That is where your ship comes in.

Q. That's the "Mikahala's" engine?

(Testimony of Martin Christiansen.)

A. That is at that time.

Q. Now, then, was there any change in the number of revolutions between twelve o'clock when you entered the engine-room until the time entered in your memorandum 12:22 when you were ordered to slow down?

A. Yes, there was a slight change in the speed.

Q. At about what time?

A. I should judge something like sixteen or seventeen minutes after I come on watch.

Q. How's that?

A. Sixteen or seventeen minutes after I come on watch. After twelve o'clock I remember making a remark to the oiler that I thought there would be something doing. [2856—2025]

Q. About sixteen or seventeen minutes later. How many revolutions was the engine making?

A. What's that?

Q. How many revolutions then was the engine making? A. Increased slightly, four or five.

Q. About 69 or 70 revolutions?

A. Just enough to notice.

Q. Had you been on the "Mikahala" on watch in the engine-room on the "Mikahala" prior to twelve o'clock on Wednesday night?

A. Well, I'd been on—no, Tuesday afternoon.

Q. Tuesday afternoon were you in the engine-room at any time when the "Mikahala" was going full speed, Tuesday afternoon?

A. I was there from twelve to six.

Q. From twelve o'clock on Tuesday in the daytime until six in the evening? A. Yes.

Q. Did the "Mikahala" go full speed at any time

(Testimony of Martin Christiansen.)

during that afternoon? A. Yes.

Q. About how many revolutions was she making that afternoon when she was going full speed?

A. About the same, 65.

Q. She was then attached to the "Celtic Chief," was she not and she was stationary, the "Mikahala"?

A. Yes.

Q. So that she was making sixty-five revolutions when going at full speed as far as you observed as long as she was stationary, pulling on the "Celtic Chief" before the "Celtic Chief" began to come. That is correct? A. Yes.

Q. What was the gauge pressure?

A. 85 pounds.

Q. What's that? A. 85.

Q. The gauge pressure was 85? When was that?

A. Of course it may vary a pound or so according to cleaning the fire. When the engine is working and you clean the fire the pressure may go down.

Q. From twelve o'clock on Wednesday night until 12:22, how many pounds pressure did your engine show?

A. She probably varied anything between eighty-five and eighty. [2857—2026]

Q. Eighty pounds? That is, eighty-five or eighty pounds? A. Yes.

Q. That is, eighty-five about the highest that the "Mikahala" developed?

A. That's all she's allowed to carry.

Q. Is eighty-five the highest pounds, the highest amount the "Mikahala" developed at any time you attended to the engine?

A. Yes or any other time.

(Testimony of Martin Christiansen.)

Q. I don't care about any other time.

A. That's all the law allows.

Q. Did you look at the indicator for the purpose of ascertaining whether or not she was carrying 85 pounds? A. I sure did.

Q. Did you observe that more than once?

A. Yes.

Q. And you found she was developing between 80 and 85 pounds pressure? A. Yes.

Q. Do you know the indicated horse-power of the "Mikahala"? A. Not positively.

Q. Do you know the diameter and pitch of her propeller? A. No, I couldn't even state that.

Q. What kind of an engine did the "Mikahala" have? A. Combined engine.

Q. Steam? A. Yes.

Recess.

Q. Mr. Christiansen, what does the ordinary engine, how much does the ordinary engine reduce in revolutions from running free when it is tied up to a solid object?

A. Well, it depends considerably on the kind of an engine. A high-speed engine wouldn't reduce as much as a low-speed engine in comparison.

Q. How's that?

A. It depends considerably on the kind of an engine. A high-speed engine wouldn't reduce as much as a low-speed engine in comparison.

Q. Was this a high-speed engine?

A. No, she makes 85 revolutions at full speed.

[2858—2027]

Q. You take an engine that makes as much as a hundred revolutions, what will it reduce proportion-

(Testimony of Martin Christiansen.)

ately? A. Fifteen or twenty.

Q. Fifteen or twenty revolutions? A. Yes.

Q. How much would an engine making 85 revolutions reduce? A. Depends on the conditions.

Q. Now, you take an engine like the "Mikahala's" 65-revolution engine at high speed, what would an engine of that sort reduce running free and when tied up to a solid object?

A. She was making that tied up.

Q. What does she make when running free?

A. About 85.

Q. 85?

A. 81 or 185, 80 or 85, rather. That's about her average.

Q. Now, then, if 70 revolutions was the highest that the "Mikahala" developed between twelve o'clock and twelve twenty-two, how do you account for the fact that it didn't go up to as high as 85?

A. She was evidently not going ten miles an hour.

Q. Wasn't she going full speed?

A. That doesn't make any difference. Full speed through the water and an engine going full speed is two different things.

Q. What would tend to prevent her?

A. Resistance of course.

Q. Resistance of what? A. Any object.

Q. She was still attached to the "Celtic Chief" even though the "Celtic Chief" was afloat?

A. Yes, or attached to any other object.

Q. Was the only reason that you thought that the engines were running at full speed when you came to the engine-room, the fact that the throttle was open?

A. Pressure on your gauge.

(Testimony of Martin Christiansen.)

Q. And you noticed when you first came into the engine-room that the pressure on the gauge was how much? A. 85.

Q. And her throttles were open? [2859—2028]

A. Yes.

Mr. OLSON.—That's all.

Mr. WARREN.—I'd ask leave for one more question on redirect.

Mr. OLSON.—What is the question?

Mr. WARREN.—On Wednesday night, Mr. Christiansen, and during Wednesday, do you know if there was any difference between the clock in the engine-room and the clock on the deck from which the bell signals were given?

A. There possibly was. They sometimes are a minute or two.

Q. You don't know?

A. I couldn't say. Often there is a little difference between the engine-room clock, anyway. I think we had the best timepiece in the engine-room.

Mr. WARREN.—That's all.

Recess.

Mr. WARREN.—I desire to read in evidence, at this time, your Honor, the deposition of Maurice Barrett, a witness for the libellants. This document itself reads, "Called for the Libellant Matson Navigation Co." only, but it is for the Inter-Island as well.

Mr. OLSON.—It doesn't make any difference.

(Mr. Warren proceeds to read deposition.)

Mr. OLSON.—I move to strike the last answer on the ground that the witness isn't shown to be qualified to answer; he isn't shown to be an expert. I'm

(Testimony of E. P. Faneuf.)

now referring to the last answer on direct of the deposition of Maurice Barrett, on page 7 of the deposition.

(Motion read.)

Mr. OLSON.—And to that, and further on the ground that it is the conclusion and opinion of the witness.

The COURT.—I am going to reserve my ruling on this point.

(Mr. Olson reads cross-examination; Mr. Warren, redirect; Mr. Olson recross.)

Mr. WARREN.—I offer this deposition in evidence.

The COURT.—It will be received in evidence subject to my ruling [2860—2029] on the reserved question.

Friday, October 20, 1911.

[Testimony of E. P. Faneuf, for Libelants.]

Direct examination of E. P. FANEUF, a witness called on behalf of Libellants Matson Navigation Co. and Inter-Island Steam Navigation Co., and sworn.

Mr. WARREN.—Q. What is your age, Mr. Faneuff? A. I am forty years of age.

Q. And your occupation? A. Engineer.

Q. And how long have you been an engineer?

A. Twelve years, sir.

Q. Engineer of steam vessels? A. Yes, sir.

Q. And in December, 1909, how were you employed?

A. As chief engineer of the S. S. "Likelike."

Q. Of the Inter-Island Co.?

(Testimony of E. P. Faneuf.)

A. Inter-Island Company.

Q. And you were present at the operations with the "Likelike" at the time the "Celtic Chief" was ashore? A. Yes.

Q. And went out there on Wednesday, the day she came off? A. Yes, sir. No, sir, on the 8th.

Q. What's that? A. December the 8th.

Q. December the 8th, well that would be Wednesday? A. Yes.

Q. And she came off the night of December 8?

A. Yes, sir.

Q. What were your watches?

A. Six-hour watches, sir.

Q. And when were you on duty?

A. Six to twelve A. M. and P. M.

Q. Six P. M. to twelve midnight?

A. Yes, sir.

Q. And you were followed by whom?

A. The first assistant engineer, Chas. Strohlin.

[2861—2030]

Q. And during that time the "Likelike" was attached to the "Celtic Chief" with a hawser?

A. Yes, sir.

Q. Now, when did the "Likelike" commence towing on the "Celtic Chief"?

A. On the 8th of December.

Q. What time of day?

A. 12:29 P. M., I believe.

Q. Have you brought with you an extract from the ship's log? A. I have, sir.

Q. Relative to the time— A. Yes.

Q. That your engines were working at full speed and the variations of the engine? A. Yes, sir.

(Testimony of E. P. Faneuf.)

Q. Will you produce that please? '

(Witness produces document from his pocket.)

Q. And you went on duty, you say, at six P. M. of December 8? A. Yes, sir.

Q. Now, do you know how the ship's engine was running at that time? A. I do.

Q. How? A. Full wide open, sir.

Q. And how long after that time, six P. M., when you went on duty, did it continue to run wide open without change of throttle?

A. Well, I couldn't say without referring to the log.

Q. Have you any idea at all?

A. No, sir, without reference to the log.

Q. That is, it might be a very short time only, even as much as a few minutes?

A. Might have been apulling a short time or we might have stopped the engines to adjust the line or something of that description.

Q. Now, this document you have produced, as, you say, a precise copy of the log of the "Likelike," engineer's log for December 8 and 9?

A. Yes, sir, it is.

Q. 1909. You have taken this off and compared it very carefully? A. Yes, sir.

Q. You know this corresponds absolutely?

A. Sure!

Q. With the log itself?

A. Yes, sir. [2862—2031]

Mr. OLSON.—We have no objection to it; this document may be admitted as if it was the log itself.

Mr. WEAVER.—On behalf of the Miller Salvage Co. we admit it is a true copy and may be taken in

(Testimony of E. P. Faneuf.)

the place of the log.

Mr. OLSON.—Same for the claimant.

Q. Referring to this log, can you say how long this engine continued at full speed?

A. By this paper, December 8, we were running full open.

Q. For how long?

A. Until the ship come off the reef.

Mr. OLSON.—Until you went off the watch?

The COURT.—Yes.

Q. At least until 12 o'clock midnight at which time you went off duty? A. That's right.

Q. Then you were succeeded by Chas. Strohlin, your first assistant?

A. Yes, I was replaced by Strohlin, my first assistant.

Q. The entries in this log following 12 o'clock midnight, December 8, were made by whom?

A. The entries into the note-book was made by the first assistant engineer from 12 o'clock midnight to 6 A. M.

Q. Now, and how were the entries made in the log itself as to his watch?

A. I copied all entries from the note-book into the log.

Q. From his notes?

A. From his notes, yes.

Q. What was his part afterwards with his notes, if any?

A. When the note-book is full, why, it's generally destroyed, thrown away.

Q. Is that a temporary or permanent record?

A. That's merely temporary until I can copy it.

(Testimony of E. P. Faneuf.)

Q. There is no question but what that corresponds to a slate on another vessel is there, Captain?

A. Yes, it corresponds to a slate. It's the same as a slate.

Q. When did you make the transcription from his notes into the log?

A. On the 9th. [2863—2032]

Q. And you know those were correctly transcribed? A. Yes, sir.

Q. What is your duty, if any, as chief engineer, and the duty of your assistant with respect to any records in the engine-room of this kind?

A. The law compels us to keep a record of all movements of the ship.

Q. What law is that? A. Federal law.

Q. And this is the record kept in compliance with that law, as you understand it? A. Yes, sir.

Q. So that you can state that the entries in the log and this paper are the—constitute the record and the only record that is kept of those movements that night? A. This is the only one.

Mr. WARREN.—Now, I desire to offer this document in evidence, your Honor, as a copy and admitted to be a true copy of the log itself.

Mr. OLSON.—Object to the offer on the ground that it's a self-serving declaration and that it's hearsay, and on the ground that it's incompetent, irrelevant, and immaterial.

Mr. WEAVER.—Same grounds for the Miller Salvage Co.

The COURT.—I'll reserve the question and take it up later.

Mr. WARREN.—Under the circumstances, your

(Testimony of E. P. Faneuf.)

Honor, may further questions be put subject to reserved ruling in order if it is allowed it won't be necessary to recall the witness?

Then I take it that this document may be marked for identification pending the ruling of the Court.

(Marked Libellant's Exhibit "M," for Identification.)

Q. What is the horse-power of the "Likelike"?

A. About 340.

Q. You have taken cards yourself?

A. Yes, sir.

Q. With your engine at full speed, how many pounds steam pressure do you carry?

A. 150. [2864—2033]

Q. And what is your steam capacity?

A. 150.

Q. How many revolutions would this engine make at full steam and pressure if tied fast to a stationary object, that is, the vessel going at full speed in the water but held back immovable?

A. The engine would make about 98 or 100 revolutions per minute.

Q. 98 or 100? A. Yes.

Q. And how many if running free?

A. Running free all the way from 130 to 138.

Q. Now, if the ship's engine were running full speed and the pressure were full steam pressure and made fast to an immovable object, as, for example, a ship fast ashore, and that being the condition of the engine and there being no change of the throttle, if the revolutions of the engine should increase, what would that signify so far as the propeller and movement of the vessel, of the towing vessel is concerned?

(Testimony of E. P. Faneuf.)

A. It would signify that the ship was free from any object.

Q. What is the slip of a propeller? Define it.

A. The slip of a propeller is the difference between the velocity of a screw revolving in the water and the velocity of the ship in the water.

Q. When a ship is held fast, what would you say, what proportion would her slip bear to her revolution? A. As to slip? It would be all slip, sir.

Q. And the slip varies with the revolutions, how?

A. Well, if it be, if the ship was tied to an object, it would be all loss or all slip.

Q. Now, I understand you when the ship moves forward her revolutions increase? A. Yes.

Q. Now, how do they increase in their relation as compared with the slip?

A. They increase, compared with the slip, as soon as the vessel is free and moves then the slip [2865—2034] begins to be less and the faster she goes the less the slip.

Mr. OLSON.—I'll admit that the less the slip the greater the number of revolutions, but I, of course, do not admit the proportion.

Q. Now, I'll ask you what is the relative proportion between decrease of slip and increase of revolutions?

Mr. OLSON.—I object on the ground it does not appear that a proper foundation is shown; furthermore, that it doesn't appear that this witness is qualified to answer.

Q. I'll ask you, please, to state the pitch of the "Likelike's" propeller.

A. The pitch of the "Likelike's" propeller is 8

(Testimony of E. P. Faneuf.)

foot, 3 inches; 8 feet, 3 inches. And the diameter of her propeller?

Q. And the diameter of her propeller?

A. That is 8 foot, 3 inches.

Mr. OLSON.—The pitch and the diameter are the same?

A. Yes, sir.

Q. Now, then, referring to a tow vessel having a propeller of the pitch and diameter of the “Like-like’s” and a vessel otherwise corresponding to the “Likelike” in horse-power and engine capacity, such as you’ve testified, what, in that case, would be the proportionate or relative difference between the slip and revolutions? In what proportion would revolutions increase?

A. Well, that would be very hard to compute. It all depends on the resistance of the ship on the propeller, the direction of the ship, the lines of the ship—everything. If a ship is fast, according to the rules, it would be all pitch, that is, all slip. And if it had, say, for instance, the vessel was off the dock, say eight fathoms, the slip would be greater.

Mr. WEAVER.—That’s due to what you call suction friction?

A. Yes.

Q. The suction friction would be greater as the vessel is free?

Mr. OLSON.—I object to the question and ask to have the answer stricken on the ground it is immaterial. [2866—2035]

Mr. WARREN.—I’ll withdraw that question and ask you instead: It will depend, then, on how hard

(Testimony of E. P. Faneuf.)

or how easy the ship might be coming off the reef for one thing, would it?

A. Yes, sir.

Q. What the increase in revolutions would be?

A. Yes, sir.

Q. And you don't go any further than just stating that there would be an increase as the ship came?

A. Yes.

Q. And when the ship got free of the reef it would be almost running free?

Mr. OLSON.—I object to that on the ground it assumes something the witness hasn't testified to and furthermore on the ground it is leading.

The COURT.—It is leading.

Mr. WARREN.—Subject to the eventual ruling of your Honor, I close my direct.

Cross-examination.

Mr. OLSON.—Q. When you said that the "Like-like's" horse-power was 340, you mean that's her indicated horse-power? A. Yes, sir.

Q. And when you referred to her licensed steam pressure that is the highest amount that her gauge will show in any event? A. No, sir.

Q. That's the highest you are permitted to go?

A. That is what we're allowed.

Q. You, as engineer of the "Likelike," would not permit a higher steam pressure than that to be used?

A. I would not.

Q. And, as a matter of fact, while you have been her engineer, you have not permitted it to go any higher than that, have you?

A. I do not. [2867—2036]

(Testimony of E. P. Faneuf.)

Q. While you were on watch between six P. M. of Wednesday, December the 8th, until twelve o'clock that night, will you state what the actual steam pressure was as shown by the gauge?

A. Well, as to that, the steam gauge will vary from two to three pounds; sometimes you will have 148 or 149. It is very hard to keep pressure on the gauge to the pound with coal. That's a very hard matter to do with coal as fuel.

Q. State as nearly as you can.

A. I should say she averaged about 149.

Q. It would vary a pound or two on one side or the other? A. Bound to vary, yes, sir.

Q. Was that constant to that extent, allowing for variations, during the whole six hours?

A. Yes, sir.

Q. You received no orders then, while you were in the engine-room during those six hours?

A. Well, I couldn't say without referring to the copy.

Q. You have seen it, haven't you?

A. I've seen it. I haven't memorized it.

Q. You are now referring, are you, to a copy from the log-book for December 8 and 9? A. Yes.

Q. Did you receive any orders in the engine-room from six P. M. to twelve of Wednesday night?

A. No, sir.

Q. Do you know how many revolutions your engines were making during those six hours, per minute? A. Yes, sir.

Q. How much? A. 98.

Q. How much? A. 98.

(Testimony of E. P. Faneuf.)

Q. 98 per minute? A. Yes.

Q. Was that constant? A. That's average.

Q. Might vary how much?

A. Might vary one revolution.

Q. Might be 97 one time, 98 another, and 99 another. [2868—2037]

A. If the steam varied two, the revolutions would vary about three-fourths of a revolution.

Q. How were you able to determine it was making 98? A. By register.

Q. You have a revolution register, have you?

A. Yes.

Q. And did you observe that in the course of the six hours?

A. Yes, sir. Every two hours its recorded.

Q. How are you able now to remember that it was an average of 98? A. By the log.

Q. During those six hours? A. Yes, sir.

Q. Doesn't the reference to register to the revolutions per minute refer to a time when you were not on watch, in that log?

A. Not from six to 12 P. M.

Q. There is nothing there in the log showing what the revolutions were from six to twelve P. M., is there? A. No, sir.

Q. Then you don't know from this log what the revolutions were from six P. M. to 12 P. M.?

A. 98 average.

Q. How do you know that from that log?

A. Revolutions per minute, 98. (Witness points to exhibit.) I don't keep a record of the hour, simply take the average.

(Testimony of E. P. Faneuf.)

Q. Do you mean to say that this note here, revolutions per minutes, refers to the six hours to twelve P. M.?

A. This refers to, no, sir, on the night watch from 12 A. M. to 12 P. M.

Q. That's what that refers to?

A. That's what that refers to.

Q. This record of 98 revolutions per minute, 98, refers to 12:29.

A. When the vessel was going full ahead.

Q. There is nothing on this memorandum showing what the revolutions were between six P. M. and twelve P. M. while you were on watch?

A. No, no times. [2869—2038]

Q. That does not refer to between six P. M. and twelve? A. It does.

Q. How do you make that out when your signature is underneath that record and the record purports to be from 12:29 to 5:23 P. M.?

A. I am compelled by law to sign the log.

Q. Doesn't that note refer to the time between 12:29 and 5:23 P. M.? A. Yes, sir.

Q. It does not refer, does it, from six P. M. to twelve?

A. It refers from 12:29 P. M. to 12 o'clock midnight.

Q. It does? A. It does.

Q. If you are required by law to note the revolutions per minutes, how does it come that there is no note here of revolutions of the diminished revolutions per minute while you were stopping?

A. I did not say that the law required us to record the revolutions.

(Testimony of E. P. Faneuf.)

Q. It requires you to record all movements of vessels such as revolutions and movements in harbors. Isn't it the fact, Mr. Faneuf, that this note here that you've said refers from 12:29 to 12 o'clock that night, is a note that you took from Mr. Strohlín?

A. It is a copy.

Mr. WARREN.—I'd like at this time to have this portion read so that the record will show to what you are referring.

Mr. OLSON.—Rev. per min. 98. That's the first one. Now, the second is exactly the same and those are the only two appearing on the memorandum and I am perfectly willing that that should appear in the question and that those are the notations to which I refer in the question. I'm willing, furthermore, that the record shall show that when I referred to the notation of revolutions per minute 98, I was referring to the first of those two notations.

Q. Now, then, Mr. Faneuf, isn't it true that the first of these notations was copied by you from Mr. Strohlín's notes?

A. Yes, sir.

Q. Into the log?

A. Yes, sir. [2870—2039]

Q. So that you did not make that notation originally?

A. Not in the note-book.

Q. You didn't make any notation at all in the note-book of the revolutions per minute between the hours of six and twelve?

A. I did not.

Q. And did you transfer them into the log-book?

A. No, sir, I did not, that is merely the average.

Q. Did you transfer the note there?

A. This there. (Indicating.)

(Testimony of E. P. Faneuf.)

Q. Are you now referring to the first of these two notes, revolutions? A. Yes.

Q. Haven't you stated here that the first of these two notes of the memorandum, revolutions per minute, 98, was transferred by you from Mr. Strohlin's notes? Isn't it true that you transferred that from Mr. Strohlin's record? A. Yes, sir.

Q. Now, then, Mr. Faneuf, isn't it the fact, then, that you did not transfer any note of your own into the log for the six hours between six P. M. and twelve P. M.?

A. That record there includes the whole time.

Q. Then this note is a correct copy of the notes made by yourself in the engine-room and the notes made by Mr. Strohlin in the engine-room, is it?

A. In the average, yes. It's a correct copy.

Q. You simply made up in your log from those notes what you regarded to be the substance of those notes; isn't that the fact? Isn't that so?

A. That is an average of the whole.

Q. Then you did not transfer every word in the note-book to the log-book?

A. I did not say that I did.

Q. Well, now, then, it's a fact that you did not, isn't it? Where is that note-book?

A. I couldn't say, sir. [2871—2040]

Q. Is it still in existence? A. I believe not.

Q. What makes you think it's not?

A. Because as soon as they are filled we throw them overboard.

Q. You are sure this book was filled and thrown overboard? A. I am sure of it, yes, sir.

(Testimony of E. P. Faneuf.)

Q. Now, there might have been other notes in that note-book for December 8 and 9 which *were* do not appear in this log?

A. As to movement of vessel, it's all in there.

Q. But as to revolutions and that sort of thing?

A. The average is there.

Q. There might have been other notes that do not appear in this log, isn't that so—other records, other notes and observations? Isn't that so?

A. The notes are recorded in full with the average of revolutions, the steam pressure.

Q. I'm asking you if there might not have been other notes, more detailed notes than those in this log in the note-book itself?

A. Pertaining to revolutions, there was.

Q. Yes. Now, then, do you know, can you now testify of your own recollection whether or not the revolutions were 98, an average of 98 per minute during the six hours that you were on watch?

A. Yes, sir.

Q. You are able to say that? A. I am.

Q. How do you know that the revolutions would be 130 or 138 per minute running free in the case of the "Likelike"? A. By register.

Q. You have tried it? A. I have.

Q. Actually tested it? A. Yes, sir.

Mr. OLSON.—That's all.

Mr. WEAVER.—No cross-examination.

Mr. WARREN.—Referring to variations of revolutions that have been just discussed, what would those variations be? You've taken the average, you've testified that 98 was the average and they

(Testimony of E. P. Faneuf.)

might vary one or two.

A. Well, I take the register and record it every two hours. In two hours she might run 98 4/10, the average for the two hours; the next two hours she might run 97 6/10. [2872—2041]

[Testimony of R. Nelson, for Libelants.]

Direct examination of R. NELSON, a witness called on behalf of Libellants, Inter-Island Steam Navigation Co., and sworn.

Mr. WARREN.—Q. What is your age and present occupation, Captain?

A. Thirty-five years; master of the steamer “Helene” at present.

Q. How long have you been going to sea?

A. Since 1894.

Q. And how long have you been a master?

A. Since 1902.

Q. In what waters?

A. Master only in Hawaiian waters, waters of the Hawaiian Islands.

Q. What vessels, steam or sail?

A. Steam vessels altogether.

Q. And you were master of the “Helene” in December, 1909, when the “Celtic Chief” was ashore off the harbor? A. I was.

Q. And your vessel took part in the operations out there? A. It did, yes, sir.

Q. What time did the “Helene” take the “Mauna Kea’s” hawser? .

A. Tuesday morning, about—you want the time?

Q. About, as near as you can give it.

A. About six forty-five or seven o’clock in the

(Testimony of R. Nelson.)

morning; something like that.

Q. On? A. Tuesday.

Q. Tuesday? A. Yes.

Q. And what did the "Helene" then do with that line?

A. The "Helene" made fast to the line, the twelve-inch [2873—2042] line with a seven-inch line at the time that the twelve-inch line was fast to the "Mauna Kea," before the "Mauna Kea" let go, and after we got the seven-inch line fast to the twelve-inch line, the "Mauna Kea" let go of the end and hove up her anchor and went inside. The "Helene" then picked up her anchor and slacked out the full length of that seven-inch line that was fast to the twelve-inch line and laid down both anchor one after the other and ^{then} hauled back by means of this seven-inch line to within twenty or thirty feet of the end of the twelve-inch line and put out two other parts of the seven-inch line through a thimble and made all three ends fast to the "Helene," parcelled them up and got ready to tow.

Q. About what time did you start to tow?

A. About eight o'clock we were all ready.

Q. How many anchors did you have out?

A. Two anchors were out from the "Helene."

Q. What were their weights, if you know?

A. They are approximately two thousand pounds each, more or less. A few pounds either way.

Q. How much anchor chain did you have out on the port anchor?

A. Approximately sixty fathoms.

Q. And the starboard anchor?

(Testimony of R. Nelson.)

A. About ninety fathoms, the starboard anchor was let go first.

Q. And how long did you continue to pull on the "Celtic Chief"?

A. The total time we were connected up was in the neighborhood of forty hours.

Q. What is that?

A. I say the total— [2874—2043] that we were connected up was somewhere around forty hours, but we were not pulling full speed all that time.

Q. Then, at what times were you pulling full speed and what times at reduced speed?

A. I don't carry all that in my mind exactly. We pulled full speed before and after the time that it was supposed to be high water, and other times, when it was low water, we were pulling at moderate speed.

Q. Now, Captain, were there any variations in the pulling?

A. There was one time—there were several times when she was stopped for different lengths of time.

Q. For what purpose?

A. For fixing the tow-line and one other time we stopped to fix the engine, the "Helene's" engine.

Q. How long were those stops?

A. The total time was about three hours of stoppage.

Q. The two together?

A. Altogether, I think it was three times.

Q. When was the last stop made?

A. I think Wednesday afternoon.

Q. About what time in the afternoon, if you remember? A. Between two and three o'clock.

(Testimony of R. Nelson.)

Q. After that were there any variations in the pulling until the ship came off?

A. Oh, yes, there were variations in the pull. We didn't start to pull full speed until towards eleven o'clock on Wednesday night when it was approaching high water.

Q. And having gone full speed about that time that night how long did you continue at full speed?

A. Continued at full speed until the vessel began to [2875—2044] move, until she came off clear of the land.

Q. Then what happened?

A. The line was cut on board of the vessel, then we slowed down, stopped, and hove the line in.

Q. Now, during your pulling operations and particularly when your line, when you were going at full speed, what was the condition of your line to the "Celtic Chief"?

A. Of the twelve-inch hawser, you refer to?

Q. How was it with respect to the water?

A. It was as taut as we could possibly get it.

Q. Well, was the line in or out of the water?

A. Part of it was at the surface of the water. The lowest part of the bite of the line was on the surface just floating.

Q. What kind of a line did you have?

A. We were pulling with a twelve-inch manilla hawser, most of it.

Q. New or old? What kind, what was its condition?

A. It was a good line. I couldn't say it was brand new but it was a good line, plenty strong enough for

(Testimony of R. Nelson.)

any strain that we were able to put on it. It had been pulled on by the "Mauna Kea" before we took hold of it. It might have been new when she took it, I couldn't say about that.

Q. About how long was your line?

A. The twelve-inch line was approximately six hundred feet from the end of the quarter of the "Celtic Chief," more or less.

Q. Was was the object of placing the anchors out ahead of your vessel?

A. To put an extra strain on the line; to obtain all the extra pulling power we could get by means of the winches. [2876—2045]

Q. Tell us what you did in that connection. How did you work with those anchor lines?

A. The two anchors were out ahead of the "Helene," placed in the most advantageous position to hold the strain, and after we were connected up and started pulling, we took in all the slack of each chain. We can take in both chains at once on the "Helene." We took in all the slack that it was possible to take in by means of the power of the winches and that we kept taut. If, at any time, there was any slack on the chain it was taken in. Sometimes, if a heavy swell might surge the "Helene" back a little bit we would take in a few links of chain, as much as we could get every time. That was kept taut during the whole of the operations until the vessel came off.

Q. What were the weather conditions on Wednesday, Tuesday and Wednesday, Captain?

A. Generally fine weather.

Q. How was the sea?

(Testimony of R. Nelson.)

A. There was a moderate swell coming in from between south and east, I couldn't give the exact direction. Approximately about south, southeast, I should say.

Q. And how does that direction compare with the line of the "Celtic Chief" as she lay ashore? How did that swell strike the vessel?

A. It struck us on our port bow, that would be the starboard quarter of the "Celtic Chief."

Q. About how high would you say those swells were?

A. Well, there were some bigger than others, of course. On an average they might have been eight feet high. Some high ones might have been ten or twelve feet. An average would have been eight or ten feet.

Q. That's eight or ten feet above sea level?
[2877—2046]

A. No, from the bottom of one to the crest of the next one.

Q. Referring to the operations of the boats from the "Mikahala" and the "Helene" in lightering, would those boats in your judgment, and were they, in any position of danger in those operations in your judgment?

A. Not in extreme danger. They were in more or less danger by being alongside of the vessel by reason of the cargo that was being suspended over the side on the burthen arms. If the swells happened to come in when the sling of fertilizer was just on the gun-whale of the boat, if it got in the right position it would capsize the boat. Except for that I don't

(Testimony of R. Nelson.)

think there was any danger.

Q. Where were you, Captain, during the pulling operations?

A. That is rather a general question. I was all over the "Helene," then on board of the "Celtic Chief," into the small boat, and all around.

Q. You went aboard the "Celtic Chief"?

A. Between the "Helene" and the "Celtic Chief," that's the only boats I was on board.

Q. Did you go around on the starboard side of the "Celtic Chief"?

A. I went aboard of it, no port side.

Q. What's that?

A. I went on the port side of the "Celtic Chief" to get aboard.

Q. Did you see the "Arcona" come out?

A. I saw her when she came in the neighborhood of the "Helene," yes.

Q. And what did she do on first coming out?

A. Circled around there a little bit and then dropped [2878—2047] anchor a little outside of the position of the "Helene."

Q. Approximately where?

A. The first time she dropped anchor was approximately right dead astern of the "Celtic Chief."

Q. And then what did she do?

A. She took in part of the lines and sent a small manilla line in her boat to the "Celtic Chief" and tried to haul in position to tow.

Q. Haul what in position? A. Sir?

Q. Haul what in position?

A. Tried to haul the "Arcona" into position. They

(Testimony of R. Nelson.)

couldn't very well back in, or they didn't. They hauled in with a manilla line or part of that line.

Q. Then what happened?

A. Then they pulled up their anchor and moved to another position to northward, more to eastward.

Q. What place was that?

A. As near as I can remember, the second time she dropped her anchor further up ahead of the "Mikahala," about two or three times of the length of the "Mikahala." Ahead of the "Mikahala," somewheres in that general neighborhood.

Q. And then what did she do? A. Then they—

Q. Then what did the "Arcona" do?

A. They hauled back again with another line; took the manilla line out again, a small line and hauled back in the position where they could get the wire out.

Q. And then what else? Describe what they proceeded to do.

A. What I saw them do was to get wires out. That was, I think, forenoon, about somewheres about twelve o'clock. They got into position finally and ran their two wires from the "Arcona" [2879—2048] to the "Celtic Chief." One of them was made of two parts connected in the middle with a shackle. I saw that. Then at about three o'clock in the afternoon, between half-past two and three somewheres, when they got those wires connected up. Then they went ahead with the vessel for some reason or other, with their engine, and parted those wires or one of them—I wouldn't say they parted both of them; parted one of them anyway.

(Testimony of R. Nelson.)

Q. Are you sure there were two?

A. I think, I'm quite certain of one. My impression at the present is that there were two wires out.

Q. After she parted that what happened?

A. Then they got other lines out and got back into position again, about the same position as they were in before.

Q. What kind of a line at that time?

A. I'm not certain. My impression is they got out a manilla line to haul back with and then got out a wire line. They finally got out three lines. That was finished about dark, about seven o'clock that evening. Somewheres about that time when they finished that. And those wires were the one that were there until the vessel came off, as near as I can remember.

Q. Were those the only operations of the "Arcona" with respect to wires or putting of lines aboard, that you saw?

A. That was all that I have any recollection of. Twice they put out wires. Broke them the first time, then the second time the wires remained there until the vessel came off. That was the only operations that I saw.

Q. Where were you between three and five o'clock that [2880—2049] afternoon?

A. Wednesday afternoon?

Q. Yes.

A. I was on board the "Helene" at that time. Between three, after four, about three o'clock I was on board the "Celtic Chief" fixing the line.

Q. Were you on board the "Celtic Chief" more than once?

(Testimony of R. Nelson.)

A. During the afternoon we had to fix the towline. I came back on board of the "Helene" around four o'clock in the afternoon.

Q. Did you leave the "Helene" again after that?

A. No, not after that.

Q. Well, the "Arcona" having gotten those two lines connected up along toward six or seven o'clock, what did the "Arcona" do after that?

A. I couldn't see that she did anything further except keep the searchlight running between the, playing between her stern and the stern of the "Celtic Chief."

Q. Did you, after that, observe those lines of the "Arcona" going to the "Celtic Chief"? Did you see them?

A. I could see parts of them at various times.

Q. How frequently?

A. Any time that I might look at that I could see them running from the "Arcona's" stern until dark. After dark you could see them occasionally when the search-light happened to be in a position to show them.

Q. Between dark and the time the search-light went on, could you see those lines of the "Arcona"?

A. Well, I think the search-light was started up about dusk so that there was hardly any interval, as I recollect, that the search-light wasn't playing somewhere; not always where you could see the lines, but I think the search-light was going all through that evening, as near as I can recollect. [2881—2050]

Q. Do you remember about when it came on the first time?

Mr. OLSON.—I submit he had already answered.

(Testimony of R. Nelson.)

A. That is the best of my recollection, they started the lights just about dusk, that is, when it began to get dark.

Q. I'll ask you, from the time the light was on, about how frequently did you actually observe the lines, take note of them?

A. Well, I might say that every time I looked over there, naturally looked to see what was going on, looked at the lines, I could see them.

Q. Was there any change in their position, as you have described it, as far as you know?

A. None that I could distinguish, no, sir.

Q. Up to the time when the "Celtic Chief" came off?

A. Up to about seven o'clock in the evening after they got their lines fixed and stopped operations I didn't see any change in the lines.

Q. If there had been any change would you have noted it? A. I think that I would, yes, sir.

Q. That is, if those lines had been pulled up taut?

A. If the lines had had a strain on so as to bring them about the surface of the water I would have seen them somewheres between the stern of the "Arcona" and the "Celtic Chief."

Q. As it was, how much of those lines would you say was out of the water where they left the stern of the "Celtic Chief"?

A. Well, there might have been forty or fifty feet of the length of the wire. She was somewhere about twenty feet out of [2882—2051] the water astern and they went down on an angle say of, I couldn't say. They went down so that they looked to be lead-

(Testimony of R. Nelson.)

ing down to the bottom.

Q. And at the "Arcona" end approximately how much?

A. I think there was less because her stern was lower down, but they led right down into the water. They didn't lead straight out as a line that was taut would lead.

Q. What position did the "Arcona" have with respect to your position, the "Helene"?

A. Approximately side by side.

Q. How far from you?

A. Only between one hundred and two hundred feet about.

Q. Do you know whether or not she changed her position at all up to the time the "Celtic Chief" came off?

A. From what time? She changed her position once, yes.

Q. From six o'clock on?

A. Not to my knowledge. I didn't see any.

Q. If she had, would you have known it?

A. I think I would, yes.

Q. Did you see the buoy of the Miller anchor?

A. I could see that at all times I might look at it.

Q. Where was it?

A. It was in the water between the quarter deck of the "Arcona" and the upper deck of the "Helene" where I was most of the time, almost in line between that and the quarter deck of the "Arcona."

Q. About how close to the "Arcona"?

A. Somewheres around fifty feet, I guess.

Q. Did the relative position of that buoy to the

(Testimony of R. Nelson.)

“Arcona” change, at any time, as far as you know?
[2883—2052] A. Not so far as I could see.

Q. Before the vessel came off?

A. I couldn't see any difference in the relative position of those; as near as I could them, neither one of them changed.

Q. How frequently did you observe the buoy in connection with the quarter deck of the “Arcona”?

A. I could see that buoy all the time; that is, whenever I looked at it because lights on the quarter deck of the “Arcona” lit up the water between the “Helene” and the “Arcona” lights that were up under the structure there somewhere cast a light down on the water and that buoy so that I could see that any time, independent of the search-light. The search-light beam was more towards the “Celtic Chief” and the water between it. This buoy I could see by other lights that were on the “Arcona's” stern quarter deck.

Q. When did the “Arcona” first move from that position that night? A. That night?

Q. Yes.

A. As near as I recollect, she didn't move until the “Celtic Chief” was almost on top of her and then they steamed away quick, as quick as they could, in time to escape a collision.

Q. From where you were, would you say approximately how near did the “Celtic Chief” approach the “Arcona”? What was the least distance between the vessels?

A. Well, I could only guess at that. Might be—

Q. Your best judgment.

(Testimony of R. Nelson.)

A. In the neighborhood of twenty or thirty feet the way it seemed to me. Looked to be very close. I expected to see they hit any minute.

Q. In what direction did the "Celtic Chief" move in coming [2884—2053] off?

A. She moved directly astern the first part.

Q. Then what?

A. Then after our line was cut, two lines on the port side of the "Celtic Chief," I think they cut,—

Q. That would be what lines?

A. That would be the line of the "Helene" and the other line that was fast to the "Likelike."

Q. Then what?

A. I think her stern was pulled a little to the starboard side by means of the "Mikahala," so that after she first came off she didn't continue in a straight line directly astern.

Q. Did you see that? A. I could see that, yes, sir.

Q. Did you see the lightering operations conducted by the Inter-Island steamers and boats?

A. I know of them, yes. I saw part of the operations.

Q. Were those going on when you were on the "Celtic Chief"?

A. They were rigging up the gear the first time I went over there.

Q. Did you see the winch of the "Celtic Chief"?

A. I looked at it, I had a glance of it. I didn't look at it very closely.

Q. Did you see it operating?

A. Yes, it was in operation part of the time.

Q. Did you observe it enough to be able to judge of

(Testimony of R. Nelson.)

its conditon or capacity to any extent?

A. No, I wouldn't say that.

Q. Did you take any note of the number of slings in a bag, bags in a sling?

A. Not particularly, except that I noticed they were smaller loads than the Inter-Island boats generally handle. [2885—2054]

Q. What difference would you say, or how would you compare the loading operations or unloading operations at the "Celtic Chief" with the ordinary freight unloading and loading operations of the Inter-Island steamers at the various Inter-Island ports, as a general rule, as to danger.

Mr. OLSON.—Object to the question on that ground that it's immaterial.

Q. As to under similar conditions of weather and sea.

The COURT.—I allow the question.

A. I think there was considerable more danger to the boats alongside of the "Celtic Chief" than there would be alongside of an Inter-Island steamer.

Q. Why?

A. For the reason that a load of fertilizer alongside of the "Celtic Chief" was hung from the yardarm by means of a burthen which was fast to a pin on deck and couldn't be raised after it was lowered and, therefore, if the boat wasn't in the position to receive that load, why, the men might get hurt; they cannot get it back again, it can only go down. Whereas, alongside of the Island steamers they are prepared to take that load up immediately and run it up clear of the boat.

(Testimony of R. Nelson.)

Q. Is there any difference in the way the swell affects a boat ashore and a boat afloat?

Mr. OLSON.—Now, if the Court please, I submit that's leading.

The COURT.—I allow the question.

A. I think that the swell is more dangerous to a vessel more dangerous to boats alongside of a vessel that's fast on the bottom than to one that's afloat, for the reason that boats alongside of a steamer that's afloat [2886—2055] the steamer moves up at the same time that the boat does, whereas where a vessel is fast on the bottom, the swell runs higher and is very dangerous, the same as alongside of a rock.

Q. In your judgment, would operations such as were conducted at the "Celtic Chief" involve any danger to the men in the boats?

Mr. OLSON.—I object to the question on the ground it has been asked and answered.

The COURT.—The objection is overruled.

A. Please repeat that question.

(Question read.)

A. I should say that it did to a certain extent; to the extent that they were liable to be crushed by these loads of fertilizer that were not able to be hoisted up out of the water. That is the only danger that I can see to them.

Q. Any danger of that kind in the Inter-Island trade under similar conditions of weather and sea?

A. Not that same danger, because a load of freight outside of an Inter-Island boat is always under control of the man who is handling the book. He can take it up whenever he sees any big swell or the boat

(Testimony of R. Nelson.)

is not in position. Alongside of the "Celtic Chief" the load hung there. He would be unable to move it any way except down.

Q. In your judgment, was the "Celtic Chief" in any position of danger as she lay on the reef?

A. I think she was, yes.

Q. Danger of what?

A. Danger of having her hull stove in, her bottom.

Q. How could that occur?

A. By a very slight increase [2887—2056] in the size of the swell she could easily pound enough to cause her to leak.

Q. In view of the weather conditions prevailing, and the swell as you have testified, I'll ask you if, in your judgment, I'll ask you what would have been her danger, in your judgment, if she had been unassisted by any boat or anchor?

A. I think she undoubtedly would have remained there and sooner or later would have pounded enough to start her leaking and then if no assistance came she probably would have remained there until she broke up.

Q. What position would she tend to take on the reef if unassisted under those conditions?

A. That I couldn't say exactly. Vessels very often tend to go broadside to the swell and to the reef if left without any assistance. In fact, they naturally always do. In this case I couldn't say what would happen for certain. I can only say what vessels do under similar circumstances.

Q. Have you ever seen vessels under similar circumstances?

(Testimony of R. Nelson.)

A. I have seen vessels. One vessel went ashore close by there and was a total wreck in a few days.

Q. How long?

A. Few days, a week or so. The "Edward O'Brien" got ashore there with a load of coal. She was not assisted in any way. She filled and sank and pounded to pieces in that neighborhood.

Q. How far aground do you think the "Celtic Chief" was?

A. I am not prepared to say that because I didn't take soundings.

Q. You don't know the depth of the water around there at all?

A. I don't know anything [2888—2057] about that; no, sir.

Q. Do you know what kind of a bottom she was on?

A. I know that I saw the white water all around her caused by the coral being ground up, so I surmise she must have been on a coral bottom.

Q. What does white water of that kind indicate?

A. Indicates that coral has been ground up and carried away by the current.

Q. About what time did you first notice any motion of the "Celtic Chief" in a direction seaward?

A. A few minutes before twelve o'clock on Wednesday night.

Q. What did you see?

A. I saw the lights that I had in range over by the channel entering into Honolulu, change their position, or rather, we had changed our position with regard to the lights.

Q. We what?

A. I say we had changed our position in regard to

(Testimony of R. Nelson.)

the lights that I had selected as a range over in the channel which showed me that the "Helene" had gone more to sea and presumably the "Celtic Chief" was following as the line didn't part.

Q. Did you look at the "Celtic Chief" herself?

A. I looked at her, yes.

Q. What was her movement or motion?

A. Being right in line with the "Celtic Chief," it was pretty hard to see any movement in the same line.

Q. Any movement other than moving seaward?

A. No, I can't say that she made any other movement that I noticed. There was a moderate movement all the time, sluing a little bit. That is simply as the different swells came in she would move a little, not [2889—2058] very much, and that continued nearly all the time I observed.

Q. What kind of a motion was that?

A. It was more of a motion of the stern; more side to side; the bow would go the opposite way.

Q. What's that?

A. I say it seemed to me, from my opinion, that she was aground in the middle, near amidship, and that she was moving as if she was pivoted in the center, but it was a very slight movement, not a large movement that way.

Q. How long did this movement seaward continue before she slipped clear of the reef?

A. In the neighborhood of twenty minutes past twelve that she seemed to be free of the bottom; somewhere about that time.

Q. And what—describe that movement as to whether or not it was continuous.

A. About five or ten minutes to twelve when I no-

(Testimony of R. Nelson.)

ticed that we were changing our position in regard to lights, from that until about seventeen or eighteen past twelve she seemed to come very slowly, a little at a time; then a minute or so or two minutes, perhaps, before she came clear, why, she moved a little more rapidly and increased the rapid movement until she came clear altogether, but the first twenty or twenty-five minutes was very slow, apparently dragging over the bottom.

Q. And during that time did you observe the "Helene's" line to the "Celtic Chief"?

A. I observed part of it where it was in view near the search-light right up where it came over the quarter.

Q. Where?

A. Where it came over the quarter of the "Celtic Chief." [2890—2059]

Q. Any change in the position that you have already described?

A. I can't say that it was any different from what it had been right along.

Q. Did you observe the line of the "Likelike"?

A. I do not have any recollection of it at that time. I was busy with my own vessel and line at that time.
Recess.

Mr. WARREN.—Your Honor, I'd like to recall Mr. Faneuf for a few questions at this time. I'll state to the Court that Mr. Faneuf on going back to the ship noted a slight variance between the paper on file and the log itself which he wishes to have an opportunity to correct and, for that reason, has asked to be allowed to go back on the stand.

[Testimony of **E. P. Faneuf**, for Libelants
(Recalled).]

Mr. FANEUF resumes witness-stand.

Mr. WARREN.—Q. Will you kindly indicate, Mr. Faneuf, what the difference is? First, I'd like to ask you, you have now with you, the original log, official, original, engineer's log of the "Likelike" for December eight and nine? A. Yes, sir.

Q. 1909. Will you state what the correction is that you wish to make, Mr. ———

A. It's the record of the revolutions, steam pressure, and the volume per minute for the twenty-four minutes on December 8 that I did not record in making the copy. I copied off and read through and copied the same but not making the copy, knowing that the conditions were the same I, naturally, put down the same conditions of engines the next day because there was no change in the— [2891—2060]

Mr. OLSON.—It is not in evidence and he cannot testify about it yet.

Mr. WARREN.—Then I'll ask you, Mr. Faneuf, to please take this copy which you had this morning and make it correspond precisely with the log?

A. All right, sir.

(Witness makes correction.)

Mr. WARREN.—That covers what Mr. Faneuf asked to be permitted to make correct; then by consent of counsel I want to ask one or two questions.

Q. Mr. Faneuf, referring to the paper which the record will show we introduced, paper which was introduced subject to be ruled on which was marked for identification, Exhibit "M"—

Mr. OLSON.—I object to the document as not a

(Testimony of E. P. Faneuf.)

true copy and I object to it as it is not the original log.

I withdraw my agreement that this be allowed in evidence in place of the original log and object to the offer on the ground it is not the best evidence.

Mr. WARREN.—Now, your Honor, I'd like to make the offer of the original log of the "Likelike" produced by this witness, in place of the paper this morning offered.

Mr. OLSON.—I have no objection to that.

Mr. WARREN.—As though this log were offered this morning, your Honor.

The COURT.—Very well.

Mr. OLSON.—Now, then, I object to the log on the ground that it's hearsay; that it is a self-serving declaration; that it is incompetent, irrelevant, and immaterial; there is no foundation laid; and that it is not admissible in evidence as an official record.

Mr. WARREN.—Now, your Honor, I take it that is the same objection as was made this morning to the offer, your Honor reserving the ruling, and simply intended to be renewed.

Mr. WEAVER.—That same objection I entered into this morning and [2892—2061] I enter into at this time.

Mr. OLSON.—Furthermore, I object on the ground that the offer includes a volume of immaterial matter.

Mr. WARREN.—I intercept that objection by saying, so far as this log relates to the 8th and 9th of December, 1909. I have no objection, your Honor, to the clerk placing a strip of paper on here.

The COURT.—I'm satisfied and willing to say in

(Testimony of E. P. Faneuf.)

the record that this one for identification and not admitted in evidence may be admitted at this time.

Mr. WARREN.—I take it that's all subject to your Honor's ruling on that point?

Then it is understood that the paper offered this morning remains in evidence as an offer in place of the log itself?

The COURT.—Yes, but not yet received and only marked for identification.

Mr. WARREN.—Mr. Faneuf, this copy as you have now changed it, is now an exact copy?

Mr. OLSON.—I object to the question on the ground it is referring to a document not in evidence and, therefore, is incompetent, irrelevant, and immaterial.

The COURT.—It's subject to the same ruling.

Mr. WARREN.—Now, by consent of counsel I want to ask one or two other questions of this witness on another matter. That is, after the "Celtic Chief" was pulled off the reef, Mr. Faneuf, when the "Celtic Chief" came off, where were you?

A. When she came off she—

Q. Where were you?

A. We were at anchor then.

Q. I mean yourself personally, what part of the "Likelike"? A. In the cabin.

Q. And after the "Arcona" had towed the "Celtic Chief" out, what further operations, if any, did the "Likelike" take part in?

A. We hoisted anchors and then steamed astern of the "Celtic [2893—2062] Chief," which was in tow of the German man-of-war and when the German man-of-war dropped the tow then we put a line

(Testimony of E. P. Faneuf.)

aboard of her and towed her in the channel.

Q. Who was your captain at that time?

A. Captain Napala.

Q. Is he still in charge of the "Likelike"?

A. He is, sir.

Mr. WARREN.—That's all. Just one more question. Is Captain Napala in port to-day or in Honolulu? A. He is in Honolulu.

[Testimony of C. H. Strolhin, for Libelants.]

Direct examination of C. H. STROLHIN, a witness called on behalf of Libellants Inter-Island Steam Navigation Co. and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. What is your business, Mr. Strolhin?

A. Marine engineer, Inter-Island Steamship Co., steamer "Niihau" at present.

Q. How long have you been a marine engineer?

A. Last four or five years.

Q. And in December, 1909, on what vessel were you?

A. I was on the "Likelike" at that time.

Q. You were on her at the time of the operations connected with the "Celtic Chief," were you?

A. I was.

Q. And what was your watch Wednesday night, December 8?

A. My watch was from twelve to six that night and every other night.

Q. Twelve at night?

A. Twelve to six in the morning; twelve to six in the afternoon.

(Testimony of C. H. Strolhin.)

Q. Then you went on duty at twelve o'clock that night?

A. I went on duty at twelve o'clock. [2894—2063]

Q. At that time, do you know what rate of speed the "Likelike" engine was going?

A. "Likelike's" engines at that time were turning at full speed, as much as we could get her.

Q. Do you know how many revolutions of pressure?

A. Well, I can't remember just exactly now; I would have to refer to the log.

Q. Do you know what her engines' revolutions are at full speed?

A. There is a variance there; ordinarily running to about 130.

Q. What would be her revolutions if she were tied to a fixed object?

A. Tied up to the wharf would be anywheres from 90 to 1000.

Q. And what is the steam pressure of that engine?

A. It is allowed 150 by the Government.

Q. And do you know what the pressure was that night?

A. That pressure that night was about 149 or 150 pounds.

Q. Did you make any observations yourself?

A. Naturally going on watch, every engineer would do that; he would observe the engines.

Q. Do you remember now whether you did that or not? A. I did; that's a habit.

Q. Did you see the indicators, what they showed?

A. The revolutions; I did not take it at twelve

(Testimony of C. H. Strolhin.)

o'clock, but the chief took it at twelve o'clock and figured the revolutions and I took them when she stopped and figured them.

Q. When did she stop?

A. From ten to fifteen minutes after I came on watch.

Q. From the time you went on duty, from twelve o'clock midnight, how long did the engine continue to run at full speed without any change of the throttle?

A. There was no change in the engine to speak of until I received a bell from the captain on the bridge to stop her. She had started to speed up a bit, that was all.

Q. Describe that speeding up.

A. It was a kind of a slow process. [2895—2064]

Q. Go ahead.

A. When a ship is tied up like that she would naturally be turning slower than if she was running free, and when the ship started to come, why, of course, started to move through the water, the ship naturally at the same time would speed up. That was just a short while before the ship come off the reef when I received the bell to shut down, the ship was off, I presumed.

Q. All you know personally is that you got a bell?

A. I know that I received orders to stop her.

Mr. WARREN.—Cross-examine.

Cross-examination of C. H. STROLHIN.

Mr. OLSON.—Do you remember how many revolutions the engine was making at 12 o'clock?

A. At what?

(Testimony of C. H. Strolhin.)

Q. At 12 o'clock?

A. Well, I was just observing around there, of course, naturally I noticed she was turning up anywhere about 98, something like that; 99 revolutions, I've forgotten just exactly.

Q. That was at 12 o'clock? A. Yes.

Q. How soon was it before you noticed any change in the number of revolutions?

A. She began to speed up about fifteen or twenty minutes after I got on watch.

Q. Had it maintained 98 or 99 up to that time?

A. It had.

Q. Steadily? A. Steadily.

Q. You observed that?

A. I observed that myself.

Q. And about fifteen or twenty minutes after you came on watch, about fifteen or twenty after twelve, you noticed the revolutions began to increase in number per minute? A. Yes.

Q. About how much?

A. That I didn't have time to know. I had plenty of other things to do.

Q. How long after that did you get your order to shut off?

A. It was only a matter of a few minutes.

Q. About how much?

A. It wasn't over 5, maybe 3.

Q. So that anywhere from 5 to 10 minutes after you noticed that she began to speed up you got your order to stop the engine? A. Yes.

Mr. OLSON.—That's all.

Mr. WEAVER.—I have no questions.

Mr. WARREN.—That's all, thank you. [2896—

[Testimony of R. Nelson, for Libelants (Recalled).]

Captain R. NELSON resumes stand to continue direct.

Q. I want to ask you, Captain, if you have any knowledge of any signals for the Inter-Island boats in connection with the "Celtic Chief" operations?

A. I know we had an agreement that one red light hove in the rigging of the "Celtic Chief" was for us to go at reduced speed and when the two red lights were hove up, one additional light, we were to go full speed, as much as we could give her, as much power as possible.

Q. Were those—when those signals went up, when did the first red light go up?

A. I think those signals were used both on Tuesday and Wednesday night.

Q. What is that?

A. I think they were used on both nights.

Q. Wednesday night now?

A. Sometime early in the evening, I wouldn't say exactly; about eight or nine o'clock one red light was displayed in the rigging. In the neighborhood of eleven o'clock another light was added, asking tow, which meant for us to go full speed ahead at that time.

Q. Did you see the second one go up?

A. That I wouldn't be certain whether I *say* it or whether I *say* it afterwards and gave the order for full speed.

Q. Who gave that order?

A. I gave the order. I went up on the bridge, rang the telegraph full speed ahead.

(Testimony of R. Nelson.)

Q. Do you know whether or not that order was obeyed?

A. I think it was so far as I know; I have no reason to think it was not obeyed.

Mr. OLSON.—Move to strike as supposition and [2897—2066] conclusion of the witness.

Mr. WARREN.—What means of communication is there between the engine-room and the bridge?

A. When a signal is given from the bridge to the engine-room it is immediately answered by a telegraph by the engineer.

Q. How did you give the signal to go full speed?

A. I gave the signal by moving the hand of the telegraph from half speed to full speed and immediately—

Mr. OLSON.—Just one moment.

Mr. WARREN.—And what reply, if any did you get?

Mr. OLSON.—Just a moment. I object on the ground that it's hearsay.

The COURT.—I sustain the objection.

Q. How long have you been captain of the "Helene"? A. Since 1893.

Q. What is that? A. 1903, eight years.

Q. Pretty familiar with the boat?

A. Tolerably well, familiar, yes.

Q. Can you, on the bridge, determine whether or not a signal given by you in the engine-room is obeyed or not?

Mr. OLSON.—Object to the question on the ground it is immaterial.

Q. Otherwise than by the telegraph.

(Testimony of R. Nelson.)

Mr. OLSON.—Object to the question on the ground it is immaterial.

The COURT.—The objection is overruled.

A. Yes, when the vessel is free, moving free, you can always tell within a few seconds whether the signal has been obeyed right or wrong or exactly, by the movements of the vessel. When the vessel is [2898—2067] tied up, as she was in the present case, the only means in telling is by the difference in the vibrations of the vessel because of the increase of the revolutions of the propeller which is only noticeable to one who is familiar with the vessel.

Q. Do you know whether or not you when you gave this signal, full speed ahead at about eleven o'clock Wednesday night, the ship did or did not in fact change her speed?

A. I can say that the speed was increased. The speed of the engine was increased. I can't swear it was changed to full speed but I can say it was increased to such an extent that I noticed the difference in vibrations.

Q. Were there any other signals given after that?

A. Nothing, except to stop the vessel when the line was cut; that's the next signal.

Mr. WARREN.—Cross-examine.

Cross-examination of R. NELSON on Behalf of Libellees.

Mr. OLSON.—Did you say that you operated one winch for the purpose of heaving in on the two anchor lines, the same winch?

A. The anchor-chains?

Q. Yes, the anchor-chains?

(Testimony of R. Nelson.)

A. One windlass heaves two anchor-chains, independent or together.

Q. You were using one windlass?

A. Windlass, windlass, it was not a winch.

Q. Well, donkey-engine then?

A. Windlass steam engine.

Q. You had an engine operating that windlass?

A. Yes.

Q. A donkey-engine? A. Steam engine.

Q. Not a donkey-engine?

A. Not a donkey-engine, a steam engine.

Q. Where is that engine?

A. In the forecastle-head. [2899—2068]

Q. What kind of an engine? A. Steam engine.

Q. Do you know the horse-power of that engine?

A. I do not; no, sir.

Q. Did you see both anchors laid?

A. I knew that they were laid.

Q. Did you see them laid?

A. I didn't see them after they went under the surface of the water.

Q. Isn't that what you usually call seeing an anchor laid when its being put down in the water?

A. I saw it let go, if that is what you refer to.

Q. Did you see them both let go?

A. Yes, I saw them both let go.

Q. Was the "Helene" in the same spot when both were let go or in one spot when one was let?

A. In different spots.

Q. What did she do, steamed ahead after she laid her starboard anchor and drop her port anchor?

A. Steamed ahead a certain distance on the star-

(Testimony of R. Nelson.)

board chain and then dropped the port anchor and then backed up to her position.

Q. Were you up in the fore-castle-head at any time?

A. Not during the letting go of the anchor or moving the vessel.

Q. Did you see the steam engine being operated at any time for the purpose of operating the windlass? A. I did, yes.

Q. Did you personally see that?

A. I did. I could see that from the bridge.

Q. When did you see that done?

A. After we were in place heaving taut.

Q. How many times did you see that done?

[2900—2069]

A. I can't state.

Q. Did you see it done more than once?

A. I did, yes, sir.

Q. Could you see both the windlass and the engine?

A. I cannot see the whole windlass; it's up on deck.

Q. Who is the man that was running the engine?

A. The winch-man, donkey-man we call him.

Q. Who is that man?

A. He's a Japanee or native, whoever it happens to be at the time; one of the crew.

Q. Who was it at the time? A. I don't know.

Q. Have you no idea? A. No idea, no, sir.

Q. Have you any idea how many times you saw that windlass busy in that way heaving on the anchor-chains?

(Testimony of R. Nelson.)

A. Three or four times; I don't remember myself. Whenever I thought it needed to be hove in.

Q. Did you see that done at any time about dark on Wednesday?

A. Couldn't see it done after dark.

Q. So that from darkness on Wednesday, until the "Celtic Chief" came off, you did not see that windlass used in any way for the purpose of heaving in on the anchor-chain because it was too dark?

A. I couldn't see it personally; I could hear it.

Q. How do you know that it was the windlass that was being used?

A. Because the windlass has a sound particularly its own.

Q. Has it a different sound letting it down?

A. Yes, sir, it has.

Q. Are you willing to swear that *there* was so that you were able to determine by hearing how many times it was done?

A. I can swear to two times. [2901—2070]

Q. How many times after darkness?

A. I only say once or twice, a few times.

Q. Dozen? A. Not as much as a dozen.

Q. As many times as six?

A. I wouldn't swear, whether two, three, or four.

Q. Did they do it the early part of the evening?

A. You are referring to Wednesday evening?

Q. Wednesday evening?

A. They might have done it in the early part.

Q. Don't you know? A. I don't recollect.

Q. You've said that they did several times in the course of the evening? A. So I have.

(Testimony of R. Nelson.)

Q. Did they in the early part?

A. They may have done so.

Q. Don't you know?

A. I don't recollect any particular minute.

Q. Now, then, isn't it possible that you heard this on Tuesday night, and not Wednesday?

A. I heard it both times.

Q. Are you sure? A. Sure.

Q. Yet you are not able to say now whether or not you hear it in the early part of Wednesday?

A. It might have been.

Q. You don't know? A. I don't know.

Q. You are absolutely positive you heard that windlass heaving in on the anchor-chain both on Tuesday night and Wednesday night?

A. Yes, sir.

Q. You saw it busy on Wednesday?

A. During the daytime, yes.

Q. Several times? A. Several times.

Q. How do you account for the fact that they were able to use this windlass several times on [2902 — 2071] Wednesday night, several times on Wednesday, several times on Tuesday night?

A. I didn't say how many times; several is more than once.

Q. Did they use it several times on Wednesday night? A. They did.

Q. You state it might have been as much as six?

A. I don't say it was any more than six.

Q. Didn't you say it might be as much as six?

A. Several times.

Q. As much as six? A. It might be less.

(Testimony of R. Nelson.)

Q. Are you still prepared to say that it was as many times as six on Wednesday night?

A. It might have been.

Q. Now, about how many times on Wednesday, do you think, in the day?

A. I have no definite recollection. Whenever I thought it was necessary I had the chain hove taut.

Q. Now, you say it used didn't you? A. I did.

Q. Did you see it used more than once for that purpose on Wednesday?

A. I think very likely I did; yes.

Q. More than twice?

A. Well, might be and might not. Twice is several.

Q. Do you know it was used at all on Wednesday?

A. I do.

Q. You are positive? A. Positive.

Q. You know it was used once, but you don't know it was used more than once.

Mr. WARREN.—I object to that as asked and answered.

The COURT.—Objection overruled.

A. It might have been twice, yes, and might have been more. [2903—2072]

Q. Do you know whether or not it was used more than once on Wednesday in the daytime for the purpose of heaving in on those anchor-chains?

Mr. WARREN.—Object to the question; asked and answered.

A. My impression is that it was.

The COURT.—I overrule the objection.

Q. Now, then, on Tuesday, you heard it used on

(Testimony of R. Nelson.)

Tuesday night, did you? A. I did, yes, sir.

Q. About how many times?

A. I don't know how many times. I don't recollect.

Q. More than once?

A. I didn't keep any recollection of times.

Q. If you heard it at all on Tuesday night, as you have testified, you must be able to say you heard it once at least? A. Yes.

Q. Now, then, do you know whether you heard it more than once?

A. I wouldn't say how many times I heard it.

Q. I'm asking you to do so?

A. I can't say that for certain.

Q. The most that you are willing to swear to is that you heard it once on Tuesday night, you saw it once on Wednesday and once on Wednesday night. Now, are you prepared to say that it was used for the purpose of heaving on the anchor-chain six times.

A. I can't swear to that many.

Q. Can you swear to six?

A. I wouldn't want to swear to that.

Q. All you are prepared to swear positively now is that it was heaving in on Wednesday night?

A. Yes.

Q. You can't say more than once? A. I can't.

[2904—2073]

Q. How does it happen that you were able to remember so clearly that it was hove in on Wednesday night and yet you are not able to remember whether it was more than once?

A. That's just my general recollection.

(Testimony of R. Nelson.)

Q. You might be mistaken?

A. Possibly, yes. No one is perfect especially after two years.

Q. Did you hear those anchor-chains hove in Wednesday night after eleven o'clock?

Mr. WARREN.—I think the question is asked and answered, your Honor.

The COURT.—Objection overruled.

Q. Answer the question.

A. I'm not prepared to state any particular hour when the chain was hove in.

Q. So that, after the "Celtic Chief" began to move seaward you don't know whether or not your anchor-chains were hove in? A. I do, yes.

Q. You said eleven o'clock the "Celtic Chief" didn't seem to move? A. I did not.

Q. Didn't I ask you after eleven o'clock.

A. You said at eleven o'clock as I understood the question.

Q. Did you hear the windlass used for the purpose of heaving in on the "Helene's" anchor-chains after eleven o'clock on Wednesday night?

A. I did, yes.

Q. More than once?

A. It was sort of a continuous operation after about ten minutes, five or ten minutes before twelve.

Q. So that now we have accounted for that one time on Wednesday night. Now, then, kindly refresh your memory and state whether or not it was used before eleven o'clock on Wednesday night?
[2905—2074]

Mr. WARREN.—I object to that and ask that the

(Testimony of R. Nelson.)

voluntary statement of counsel be stricken from the record.

Mr. OLSON.—I withdraw the question. Now, Captain, are you prepared to swear that you heard that more than once on Wednesday night, the windlass heaving in on your anchor-chains?

A. It might have been more than once.

Q. Are you prepared to state that you now remember more than once?

A. I don't limit myself to any number.

Q. Kindly answer my question.

Mr. WARREN.—I submit the question is asked and answered, your Honor.

The COURT.—Objection overruled; he has not. Now answer it.

A. What is the question? (Question read.)

A. I don't remember the time, any particular time. My impression is that it was used once or twice or several times.

Q. That's your present recollection?

A. That is my recollection.

Q. Now, then, how many times was it used after eleven o'clock?

A. After eleven o'clock the windlass was used as fast as we could get in the chain. It was a continuous occasion.

Q. What did you call that?

A. It was a continuous occasion.

Q. That was once? A. Yes.

Q. Now, then, do you remember now that those anchor-chains were hove in by means of that windlass before eleven o'clock.

(Testimony of R. Nelson.)

A. Not the exact time, no, I don't. [2906—2075]

Q. You don't remember of any before eleven o'clock? A. No, not the exact time; no.

Q. I want to know what you mean. Do you mean that you are unable to say whether or not those anchor-chains were hove in at all by means of the windlass before eleven o'clock?

A. My impression is that they were.

Q. About how long before eleven o'clock?

A. There you are. I don't know what time.

Q. You say that your impression was that they were hove in before. How many times does your impression cover? A. We'll say at least once.

Q. You remember that distinctly?

A. I didn't say so. I said my impression was.

Q. Was that in the early part of the evening or in the late part of Wednesday night?

A. I don't know what time it was; I couldn't fix any particular time.

Q. As far as you know the "Celtic Chief" didn't move, did it, until after eleven o'clock?

A. So far as I know it didn't move until about ten minutes before twelve. That's the first, between five and ten minutes, I don't know exactly the time. That's the first indication that I had of any movement of the vessel.

Q. About how much anchor-chain did they heave in each time on Wednesday?

A. Not more than one or two links at a time.

Q. What is the length of a link?

A. About eight inches.

Q. You can only remember once on Wednesday?

(Testimony of R. Nelson.)

A. I can only testify positively that Wednesday evening [2907—2076] when the vessel began to move.

Q. Then, as a matter of fact, you don't know, in so far as time is concerned, if the windlass was used at any particular time prior to eleven o'clock?

Mr. WARREN.—Object to the question as nonsensical, in the first place, and asked and answered in the preceding questions.

Q. Then, Captain, except for this one time, this **continuous** heaving in on the anchor-chain after the "Celtic Chief" began to move on Wednesday night, you are not now able to fix any definite time when the windlass was used for the purpose of heaving in on the "Helene's" anchor-chains?

A. I am, one particular time, yes.

Q. Now, when was that one particular time?

A. That was on Wednesday.

Q. At what time?

A. Nearly twelve o'clock at noon when we stopped the engine.

Q. Now, then, is there any other time, except that one and the continuous movement after the "Celtic Chief" began to move?

A. No other particular time that I can state. At that time I ordered it hove taut and I know it was done so.

Q. How many links were taken in that time?

A. I didn't count them.

Q. What's your present judgment?

A. Several links.

Q. By several do you mean as many as four or five?

(Testimony of R. Nelson.)

A. Hardly as much as that. I should think two or three links.

Q. That would be, eight inches to the link, about a foot and a half or two feet of chain?

A. Something like that. [2908—2077]

Q. I see. Now, then, you don't know, then, definitely whether there was any taken in on Tuesday night? A. I don't know anything about it.

Q. Do you know whether any was taken in Tuesday? A. My impression is that it was.

Q. It is only an impression?

A. That's all.

Q. And the same is true of Wednesday prior to 11 o'clock? You were unable, by means of your anchor-chains, to get your twelve-inch hawser clear of the water, weren't you?

A. Yes, the line was—by means of the chain the line never taken out of the water.

Q. As a matter of fact, throughout the whole operations your twelve-inch hawser lay in a bight.

A. A part of the line was in the water.

Q. And if Captain Macaulay has testified that practically at all times the "Mikahala"—

A. You are referring to the "Helene"?

Q. I mean the "Helene." While the "Helene" was going full speed ahead, the lines were clear of the water except when the swells would come underneath, he would be incorrect, in that testimony?

A. According to my recollection, yes.

Q. If Captain Tullock says the "Helene's" lines at one time were straight out of the water as a fiddle-string, he was wrong? A. I should think he was.

(Testimony of R. Nelson.)

Q. As a matter of fact, it is impossible for the "Helene" by heaving in on her anchor-chains or in any other way to keep that line straight out of the water without breaking it? A. I think so.

Q. You are not sure? A. Sure.

Q. That is your judgment? A. That is my judgment. She might jump and do it. [2909—2078]

Q. That's the only way you could get it straight out of the water? A. That's the only way.

Q. How long was that line? What was the distance between the stern of the "Helene" and the stern of the "Celtic Chief," approximately; as near as you can now judge?

A. Somewheres about six hundred feet, I should judge. I don't know exactly.

Q. How long do you think the lines of the "Arcona" were?

A. I don't know anything about the lines of the "Arcona."

Q. Have you no idea?

A. I might have an idea. I don't know enough to testify. I'm here under oath. I won't testify about the "Arcona's" lines under oath.

Q. You didn't observe where the "Arcona's" lines were located with reference to the "Helene"?

A. I did; yes.

Q. Judging from that, what would be the distance?

A. Very close to the same distance; only a few feet of the distance of the "Helene"; within twenty or thirty feet.

Q. Was the "Helene" pulling as far to seaward as the "Arcona" was lying?

(Testimony of R. Nelson.)

A. They were approximately side by side with only a few feet difference.

Q. What about the "Mikahala" then?

A. I don't know anything about the "Mikahala."

Q. You didn't see her? A. I saw her, yes.

Q. Judging from what you saw?

A. Judging from what I saw I should say that she was perhaps a little less than the "Arcona."

Q. About how much less?

A. That I couldn't say, how much less.

Q. Couldn't you tell with reference to a ship's length the length of the "Mikahala"?

A. I might give a guess [2910—2079] at it.

Q. You remember what the situation out there was at the time? A. It's pretty clear in my mind.

Q. Now, making a guess at the length of the "Arcona," how much of the "Mikahala" was visible from the "Helene's" stern?

A. I think from the stern of the "Helene," probably you could see the whole of the "Mikahala."

Q. So that you think, do you not, that the "Mikahala" was her whole length nearer to the "Celtic Chief" than the "Arcona"? Do you not?

A. I should say that is about as I recollect it.

Q. And that notwithstanding the fact that the "Arcona's" wires were running almost straight down from her stern into the water and also practically straight down from the "Celtic Chief" into the water, at that time? A. Yes, sir:

Q. You came out on Tuesday morning and took the "Mauna Kea's" place, didn't you?

A. Yes, sir.

(Testimony of R. Nelson.)

Q. Was the "Likelike" there then?

A. No, sir.

Q. When did the "Likelike" arrive?

A. If I remember right, about eleven o'clock Wednesday morning.

Q. Eleven o'clock? About the same time that the "Arcona" put in its appearance?

A. I think a little later.

Q. A little later than the "Arcona"?

A. I think so. I am not certain.

Q. You saw the "Intrepid" on Tuesday, did you not, and [2911—2080] Wednesday morning?

A. I did, yes.

Q. Did you observe whether or not this line was straight out of the water, and was lying on the surface of the water?

Mr. WARREN.—I object to it as not proper cross-examination.

Mr. OLSON.—I'm willing to make him my witness on this point.

Mr. WARREN.—Very well, I'll cross-examine him.

Mr. OLSEN.—Very well.

(Question read.)

Mr. OLSEN.—That's at any time, Captain.

A. I can't recollect enough to make an answer on any time. It might have been laying in the water, or it might have been very nearly straight. It was impossible to be exactly straight because a vessel can't pull her line but what there is some sag to it.

Mr. WARREN.—Ask to have the answer stricken as not responsible, your Honor.

(Testimony of R. Nelson.)

The COURT.—I think it's responsive; objection overruled.

Mr. WARREN.—Motion denied, your Honor?

The COURT.—Yes.

Mr. OLSON.—You spoke of moderate swells coming in from the south southeast which struck your vessel on the port bow and the "Celtic Chief" on her starboard quarter. About how much on her starboard quarter was that striking the "Celtic Chief"?

A. I wouldn't say exactly to a point.

Q. Well, as near as you can now judge?

A. You want an answer in the point of the compass or what? [2912—2081]

Q. Any way that you choose to answer so long as you confine yourself to the truth and answer the question. A. Please read the question again.

(Question read.)

A. If the "Celtic Chief" was heading north by west, and the swells came in south southeast, the swell would naturally hit her one point on the starboard quarter.

Q. About eleven degrees?

A. About that, yes, providing that the swell came from the south southeast. That is only my impression.

Q. That's your present recollection?

A. That is the nearest I can recollect at the present time.

Q. So it was striking her fairly astern, wasn't it?

A. Well, one point on the stern.

Q. Yes. Where was it you observed the average height of the swells as being eight or ten feet?

A. I observed them rolling past the "Helene."

(Testimony of R. Nelson.)

And between the "Helene" and alongside of the "Celtic Chief."

Q. And the highest that you observed in your judgment would be from ten to twelve feet?

A. I should think about that; yes.

Q. Now, as compared with Wednesday, how was the swell on Tuesday running, higher or more moderate?

A. I don't think I'd be prepared to say about that. I should say it was practically the same, I don't say there was very much difference.

Q. Don't you know, as a matter of fact, the swell was running higher on Tuesday, a little bit, possibly not very much, and gradually diminished?

A. I don't remember it as a matter of fact, but it may have been.

Q. Now, Captain, I'll ask you how often these swells [2913—2082] would come in.

A. The highest swells?

Q. No, the ordinary swells.

A. The ordinary swell was coming in all the time, it wasn't all smooth; swells coming in one after the other, various heights.

Q. There'd be two or three big ones, wouldn't there, that would come along and between them there'd be periods of small ones?

A. That's the way it usually happens.

Q. Wasn't that the way it came in those days?

A. I think it was, as near as I can recollect.

Q. You take the big ones. They'd come in—

A. My experience has been that the three swells come one after the other.

Q. How large would the swells in between those

(Testimony of R. Nelson.)

larger ones be, about how many feet?

A. They would be of different sizes.

Q. They'd be considerably smaller than the biggest?

A. Considerably smaller than the biggest.

Q. Two or three feet, possibly three or four feet?

A. All different sizes. I couldn't state the size in any particular number of feet.

Q. Isn't it a fact that two or three big ones would come in and then small ones would come in for a considerable period of time?

A. I think that pretty near describes it.

Q. About how long a time would it be—five or ten minutes, fifteen or twenty minutes?

A. No, not fifteen or twenty minutes; it might be five minutes on an average.

Q. So if it might possibly average five minutes between [2914—2083] the big swell, as a matter of fact, Captain, it would be a comparatively simple thing, wouldn't it, discharging cargo in the shore boats for those having the appliances by which the cargo is lowered into the boat to watch and let it down into the boat only between swells?

A. Not comparatively, easy.

Q. Not comparatively easy, but it was done?

A. Not comparatively easy, but it was done; yes.

Q. Successfully? A. It was, yes.

Q. And throughout all the operation, there was not a single boat that was capsized?

A. Not to my knowledge.

Q. And there was not a single man that was even knocked over, as far as you know?

(Testimony of R. Nelson.)

A. I have no knowledge of any one being knocked overboard.

Q. About how many bags did each sling?

A. I think about five, possibly, or six; four or five.

Q. As many as that?

A. I think so. I know at one time that they had difficulty with the engine aboard there that they were hoisting small loads.

Q. Don't you know they were taking two or three at a time? A. They might have been.

Q. Did you see the "Arcona" part her line on Wednesday shortly after noon?

A. I saw her part one line.

Q. Know whether that was a manila hawser or wire line?

A. The line that I saw broken was a wire.

Q. About how long do you think that was after the "Arcona" got into position and started her [2915—2084] propellers going?

A. The only time that I saw the wire broken was once; that was in the neighborhood of half-past two and three o'clock.

Q. She had gotten into position about what time?

A. About that same time.

Q. How long had she been using her propellers pulling before the line parted?

A. Not more than five minutes.

Q. Would you think it was five minutes?

A. Might have been less, might have been a minute. She just started right ahead and it was within a few minutes.

Q. If it had been half a minute, you would have

(Testimony of R. Nelson.)

remembered it as distinguished from a period of several minutes?

A. If you say from the minute she started her propellers it takes some time to get her propellers started.

Q. It wasn't a sudden jump, was it?

A. It wasn't a sudden jump; no. It may have been less than five minutes. That's as near as I can say.

Q. And that's your best judgment now, is it?

A. Yes.

Q. Did you hear the instructions or rather the orders that were given from the "Celtic Chief" to the "Intrepid" to get out of the road?

Mr. WARREN.—I object to that as not proper cross-examination.

Mr. OLSON.—Well, I withdraw the question. You made a stop on Wednesday afternoon as I understand it.

A. Yes, sir.

Q. And what did you do while your engines were stopped? A. You mean me personally?

Q. Yes.

A. I went aboard the "Celtic Chief" to find out what was [2916—2085] the trouble with the tow-line.

Q. And did you find out there was something the matter? A. I did, yes.

Q. And what was done?

A. The line was fixed properly.

Q. And then what did you do?

A. Started ahead again.

Q. Did you go back to the "Helene"? Did you

(Testimony of R. Nelson.)

personally go back to the "Helene"?

A. Yes, I went back to the "Helene."

Q. Did you give the order that she go ahead then after you got back?

A. No, I think not. I think it was started out before I got there. I had made arrangements with the mate when I signaled to him to go ahead.

Q. Did you go right back as soon as things were in shape? A. Yes, sir.

Q. So it wouldn't be a matter of more than a few minutes? A. No.

Q. Did you go on the "Celtic Chief" after that, at all?

A. Not after that; on Wednesday afternoon.

Q. About what time was it that you left the "Celtic Chief"? A. Around four o'clock.

Q. Didn't you testify on direct that your last stop on Wednesday was between two and three o'clock?

A. Yes, I think it was.

Q. How long did it take you to get things fixed up?

A. About an hour and a half.

Q. And the "Helene" wasn't doing anything during that hour and a half? [2917—2086]

A. Not anything with the engine. The line was kept taut with the chain.

Q. What was kept taut?

A. The line was kept taut with the anchor-chain. That's one of the times when the windlass was working.

Q. What was the matter with the line?

A. The line was getting chafed aboard the "Celtic Chief."

Q. How were you able to fix that?

(Testimony of R. Nelson.)

A. We took a wire pennant, put it on the twelve-inch line, took it aboard the "Celtic Chief," put another pennant around the mizzenmast with shackles in it, left the manila hawsers to chafe as much as it pleased; the wire took the chafe.

Q. Was the manila hawser from the "Celtic Chief" so that the strain was to be—

A. The wire was shackled on. I put the shackle around the twelve-inch line and let it run up against the edge of the twelve-inch line.

Q. The hawser was first pulled on board of the "Celtic Chief"?

A. The twelve-inch line wasn't; no.

Q. What was?

A. It was not the line. We only put a long line floating to the "Celtic Chief."

Q. Did the rope slack up any when you made these pennants fast?

A. It moved, slacked a little, not very much.

Q. Now, you think the search-light of the "Arcona" was plain from dusk, or from darkness, when darkness first fell on Wednesday night, until the "Celtic Chief" came off? Practically all the time?

A. I'm not certain.

Q. You *don't think* that search-light was not put on until [2918—2087] ten or eleven o'clock.

A. I haven't any definite recollection of any particular time. My impression was that it was most of the evening.

Q. You couldn't say, then, as a matter of fact, that that search-light was not on until ten or eleven o'clock. You couldn't say what the condition of the lines were.

(Testimony of R. Nelson.)

A. I could tell what the conditions of the lines were because the light from the quarter-deck shining down.

Q. You could tell? A. Yes.

Q. What light was that?

A. Those are the steamer lights.

Q. This line hung pretty directly in the water?

A. Not up and down. It hung at a small angle, say forty-five degrees, for the sake of argument.

Q. Do you know how high the stern of the "Arcona" was out of the water?

A. No, I don't know, for a fact.

Q. Well, how much according to your judgment?

A. To give a guess at it any where from fifteen to twenty feet.

Q. Well, then, that line must have been, if it was only twenty feet out of the water, it must have been hanging almost directly down in the water?

A. That is the way I recollect it. It was at a small angle out from the vessel's stern.

Q. If the stern was fifteen or twenty feet it must have been more than twenty feet from the place on the stern where it went into the water? [2919—2088]

A. Possibly it was.

Q. Why did you say twenty feet on direct without making that statement that you were not positive?

A. It wasn't—I never made statements by saying it was, only my impression. I don't testify to any exact distance in any of this testimony.

Q. Then it might have been forty feet?

A. It might have been.

Q. It might have been more than forty feet?

A. I don't know how much it was. It's my im-

(Testimony of R. Nelson.)

pression it was about twenty or thirty feet.

Q. Well, you know now that it must have been considerably more than forty feet, if the deck of the "Arcona" was fifteen or twenty feet out of the water and that line hung out of the water at an angle of forty-five degrees? A. Probably it was; yes.

Q. Now, when the "Celtic Chief" came within this distance of twenty or thirty feet of the "Arcona" as you observed, do you mean to say that if the "Arcona" hadn't started to steam away, the "Celtic Chief" would have run into her?

A. I think she might have.

Q. Well, do you think she would have?

A. I can't swear that she would because she might have been so far to the starboard side, owing to the pull of the "Mikahala" that she might have gone clear. My impression at the time was that she came very near having a collision.

Q. And might that have been a hundred feet?

A. At that time.

Q. A hundred or two hundred feet?

A. At that time I was considerably further away.

Q. How much further out?

A. The distance of our line. [2920—2089]

Q. You mean to tell the Court, do you, that you were out four or five hundred feet there?

A. I think we were, yes.

Q. And yet, standing four or five hundred feet ahead of the "Arcona" with the "Celtic Chief" over to the farthest side of the "Arcona," you were able to tell that she came within twenty or thirty feet of the "Arcona"?

(Testimony of R. Nelson.)

Mr. WARREN.—I object to the question as not a fair question and not a proper statement of the evidence.

Mr. OLSON.—Withdraw the question. Weren't you four or five hundred feet ahead of the "Arcona"?

A. No.

Q. You were not? A. Not ahead of it, no.

Q. Where were you? A. One side.

Q. Weren't you pulling straight ahead when the "Celtic Chief" came off in the direction that you were pointing? A. Yes, sir.

Q. And you were not more than a hundred and fifty feet away? A. Yes, sir.

Q. And you went straight ahead as the "Celtic Chief" came off? A. Not straight ahead.

Q. You went in the direction that you were pointing?

A. Part of the time, and then part of the time we went over to the starboard on account of the pull of the starboard anchor-chain.

Q. How long was that after the "Celtic Chief" started to move?

A. We took in the chain as fast as she moved, took in all the slack of the chain as she came along. [2921—2090]

Q. Your chain?

A. Our anchor-chains, both of them.

Q. That kept you going on the run?

A. In the direction of the anchors, yes.

Q. Now, you went between those two anchors?

A. Practically so, yes.

Q. How much to starboard of the "Helene" was

(Testimony of R. Nelson.)

the starboard anchor laid?

A. Oh, it might have been a point or two points off the starboard bow.

Q. About fifteen or eighteen degrees?

A. Possibly.

Q. And how far to port was the port anchor?

A. About. When we were tied up, tied and pulling,—about equal.

Q. And did you heave in on both the anchor-chains when the “Celtic Chief” began to come? A. Yes.

Q. And you had from sixty to ninety fathoms out?

A. Sixty fathoms on the port chain, ninety on the starboard.

Q. That would be over five hundred feet of chain on the one, and over three hundred and fifty on the other? A. Yes.

Q. And you hove on these anchor chains?

A. Until I got the anchor up, then the pull of the starboard chain pull her off to starboard.

Q. Then you had gone ahead at least three hundred and fifty feet before you veered to starboard?

A. We had.

Q. And you had about six hundred feet more to get to the other anchor? A. Yes. [2922—2091]

Q. You were about five hundred feet ahead of the position that you were originally in when you came alongside of your furthest anchor?

A. You might say that, but we were not ahead of the “Arcona.”

Q. Weren't you ahead of the “Arcona”?

A. In a general direction ahead, but not ahead as you seem to want to make out, directly ahead.

(Testimony of R. Nelson.)

Q. I'll ask you if you weren't four or five hundred feet ahead of the "Arcona" on the side that you were on? A. You *might it* that way.

Q. Do you still insist that in the position that you were, you were able to tell that the "Celtic Chief" came within twenty or thirty feet of the "Arcona"?

A. I said, my impression was that she did.

Q. Is that a guess or judgment?

A. My best judgment.

Q. Where were you, on the bridge?

A. On the bridge.

Q. Where were you on the bridge at the time that the "Celtic Chief" was coming off, and the "Helene" was moving forward between her anchors?

A. I was on the port corner of the bridge forward somewhat.

Q. That would be ahead of the beam?

A. Probably.

Q. What's the length of the "Helene"?

A. One hundred and seventy.

Q. You were about eighty or eighty-five feet forward of the stern of the "Helene," weren't you?

A. I think I was, yes.

Q. And from that position—I withdraw that. Where was your port anchor with reference to the line, the length of the "Arcona"? [2923—2092]

A. I should say the port anchor was quite a little ahead of the line of the bow of the "Arcona."

Q. And in direct line of the "Arcona," or was it to the starboard of that line?

A. It was a little to starboard.

Q. About how many feet would you think?

(Testimony of R. Nelson.)

A. That I couldn't say.

Q. Have you no idea?

A. I couldn't say; no.

Q. You stated that you were one hundred or one hundred and fifty feet off the "Arcona"?

A. That's when we were lying side by side.

Q. And your port anchor was lying about one or two points to port? A. Yes.

Q. And you had about three hundred and sixty feet of chain out?

A. Three hundred and sixty feet of chain.

Q. Wouldn't that bring that from fifty to seventy-five feet, at least, to the port of the line of your vessel. A. I think it would.

Q. Then it would bring within twenty-five feet or so of the line of the "Arcona"; if she had gone on ahead she would have come within twenty-five feet of your line? A. Possibly, she might.

Q. Now, what was the distance between your port anchor and your starboard anchor—I mean across, the distance between them?

A. You could figure that out by the angle.

Q. You figure it out?

A. I can't figure it out without paper and pencil; it might be an angle of a hundred feet.

Q. A hundred feet? [2924—2093]

A. A couple of hundred.

Q. Then when you hoisted ahead you went between, you went to port of your starboard anchor, didn't you? You went, you came alongside of her?

A. Yes.

Q. Then you couldn't have veered much over fifty

(Testimony of R. Nelson.)

or seventy-five feet of starboard in your course out?

A. Which anchor, starboard?

Q. Yes. You couldn't have veered your course more than fifty or seventy-five feet?

A. Make it a hundred.

Q. Then you had gone a hundred feet to starboard and you had traveled about five hundred and fifty feet seaward before you came to that anchor, hadn't you? A. About that.

Q. Now, the "Celtic Chief" before she started to come off the reef was about six hundred feet from the "Arcona," wasn't she?

A. From the "Helene," yes; I don't know about the "Arcona."

Q. The same about, from the "Arcona"?

A. Practically the same.

Q. Well, then, by the time you had reached that starboard anchor while you were still to port of that anchor, the "Celtic Chief" had not yet come as near as twenty or thirty feet of the "Arcona," had it? Couldn't have? A. Possibly not.

Q. It couldn't *it*, could it?

A. Not according to your figures, it couldn't; no.

Q. Aren't those figures correct?

A. I guess they are. Things moved pretty lively about that time.

Q. Then, as a matter of fact, you hadn't veered your position to starboard over a hundred feet, have you, at the time that you think that the "Celtic Chief" had [2925—2094] come within twenty or thirty feet of the "Arcona"?

A. I don't think we were much more than that.

Q. You don't think you were no more than that?

(Testimony of R. Nelson.)

A. I don't think so.

Q. Yet, you think you could tell that the "Arcona" came within twenty or thirty feet of the "Arcona" in that position?

A. That's what I judge at the time.

Q. That is, though the "Celtic Chief" was on the other side?

A. You remember it was midnight then, and you couldn't see very closely?

Q. Could you see at all?

A. Certainly I could.

Q. From what?

A. From the lights of the "Arcona."

Q. You were able to determine those twenty or thirty feet by the gap closing?

A. Couldn't do that; we were in line.

Q. How could you tell?

A. From my judgment.

Q. How could you form a judgment?

A. I have calculated to form that judgment.

Q. You have not given the exact distance?

A. No, sir, I didn't have any measure.

Q. How did you go about arriving at that judgment?

A. Because I saw the "Celtic Chief" come so close to the "Arcont" that I thought there was going to be a collision.

Q. Then the fact is, isn't it, that the "Celtic Chief" was on the other side of the "Arcona" when you saw that? Isn't it true?

Mr. WARREN.—I submit, your Honor, that is an incorrect statement of the evidence. [2926—2095]

(Testimony of R. Nelson.)

Mr. OLSON.—Answer the question.

A. Give the question again, please.

(Question read.)

A. I'll say she wasn't very far.

Q. How, then, if she was not, in your judgment, on the other side of the "Arcona," could you tell at all, could you form any judgment, if the stern of the "Arcona" was between you and the "Celtic Chief"? Answer that.

A. Because I could see the two vessels approaching and expected every minute, in my mind, that the "Celtic Chief" would run on top of the other one.

Monday, October 23, 1911.

Mr. WARREN.—I understand that Captain Tullet has not been finished as to cross-examination by Judge Weaver. They are both here. I guess, possibly, we'd better have Captain Tullet finish.

(Captain Tullet resumes stand.)

**[Testimony of Albert Tullet, for Libelants
(Continued).]**

Judge WEAVER.—Captain Tullet, on the night of Wednesday, at half-past eleven, what speed were you making, was the engine making?

A. Full speed.

Q. And how long did that continue?

A. Continued till twenty minutes past twelve.

Q. Did you give any orders with regard to the anchor before that? A. Yes.

Q. What did you do? A. Hove it up.

Q. Why did you do that?

A. To be in position to tow the "Celtic Chief."

Q. Why did you give those orders to be in posi-

(Testimony of R. Nelson.)

tion to tow the "Celtic Chief" at that time? [2927—2096]

(Captain Nelson resumes the stand.)

[Testimony of R. Nelson, for Libelants
(Continued).]

Mr. OLSON.—Captain Nelson, when the "Celtic Chief" came off the reef, the "Helene" steamed ahead, did she not? A. Not immediately.

Q. She didn't? A. Not immediately, no.

Q. Was she pulling when the "Celtic Chief" came off? A. She was, yes.

Q. What prevented her from going ahead?

A. She went ahead. You said, "steamed ahead." We went ahead, heaving in on the anchor-chain.

Q. You were not using your propellers?

A. Not when the vessel came off clear. We stopped the engine.

Q. And you began to heave in on your anchor-chain? A. When she came off, yes.

Q. Now, by the time that the "Helene," I think you testified the last time you were on the stand, by the time that the "Helene" had come alongside of her starboard anchor, the "Celtic Chief" had come within twenty feet of the "Arcona"; is that correct?

A. Twenty or thirty feet, I said, according to my judgment.

Q. And it was while you were alongside of the starboard anchor that you noticed this; is that correct? A. I think I testified in that manner.

Q. Yes. Well, your two anchors were not more than two hundred feet apart, were they?

A. I couldn't say that definitely. I don't think

(Testimony of R. Nelson.)

they were a great deal more than that.

Q. Approximately, two hundred feet apart?

A. I should say a little more, rather than less.

Q. Well, how much more? Fifty feet more?
[2928—2097]

A. Between two and three hundred feet, I should say; something like that.

Q. And your starboard anchor was about five hundred and fifty feet forward of the bow of the "Helene," was it not?

A. Ninety fathoms, five hundred and forty feet.

Q. Five hundred and forty feet?

A. About that, yes.

Q. Five hundred and forty feet. Now, the "Arcona" did not change its position to eastward or westward, that is, to port or starboard, did it, when the "Celtic Chief" came off? Its only motion was its forward motion when it began to steam on?

A. That's as far as I recollect.

Q. Now, you know, do you not, Captain, that there is considerable superstructure on the deck of the "Arcona"?

A. Towards the midship part of it, yes.

Q. And when you say towards midships, you don't mean it was like a mast, but there was a considerable superstructure, without giving any dimension, in the middle of the "Arcona"?

A. As I remember it, the quarterdeck was lower down than the middle part of it. The midship was built up like most men-of-war.

Q. But the stern of the "Arcona," I think you testified, was about fifteen feet out of the water?

(Testimony of R. Nelson.)

A. I should judge about that.

Q. How high out of the water is the bridge of the "Helene"?

A. At that time, I should say about twenty or twenty-five feet.

Q. Did you observe anybody on the stern of the "Celtic Chief" as she was approaching the "Arcona" in this way?

A. I couldn't fix any particular person that I observed. [2929—2098] I may have seen there walking around I wouldn't like to swear to it.

Q. Are you prepared to say that the search-light was on the "Celtic Chief" up to the time that the "Mikahala" pulled off to the eastward?

A. My impression is that it was shining on it or near it most of the time, that is, at that time when she came off. I don't recollect positively, but my impression is that the light was there.

Q. Now, how is it, Captain—I withdraw that. You said that your impression was that if the "Arcona" had not got under way the "Celtic Chief" would have run into the "Arcona." That, you said, was your impresssion? A. Yes.

Q. That's correct, is it? A. That's correct.

Q. Now, if you were forward of the "Arcona" four or five hundred feet, somewhat to the westward of the line of the "Arcona," how is it, if the light was shining on the "Celtic Chief" that you are not able to state positively that the "Celtic Chief" was over to the eastward of the "Arcona" and would not have run into her, in view of the fact that the "Mikahala" was pulling her off to the eastward?

(Testimony of R. Nelson.)

A. What is the question?

Mr. OLSON.—Read the question.

(Question read.)

A. I don't quite gather what you want from that question.

Q. All right, I'll restate it. If the light, the search-light, was shining on the "Celtic Chief" and, as a matter of fact, she was all ready pulled over to the port side of the "Arcona" at the time that you observed, as you thought, she was within twenty or thirty feet of her, how was it that you were unable to see [2930—2099] positively that she was out of the line of the "Arcona" so that she would have rammed her, if you were on the other side of the "Arcona" and forward?

A. I couldn't say exactly, how much she had been pulled to the eastward. I couldn't make that certain.

Q. Now, at the time that you observed that she was, as you judged, within twenty or thirty feet of her, were you looking at her across the stern of the "Arcona" or behind the stern of the "Arcona"? What was her position?

A. I think that I could see both of them together.

Q. You mean to say that you could see the "Celtic Chief," astern of the "Celtic Chief" and also across the stern of the "Arcona"?

A. Part of the "Celtic Chief" stuck further past the stern.

Q. At the time that you observed that she was within twenty or thirty feet?

A. Why yes.

(Testimony of R. Nelson.)

Q. Then you knew she would ram her?

A. I couldn't tell.

Q. Was she was pointing towards the "Arcona" at that time? A. In that direction.

Q. Then she was not pointing to eastward or westward? A. Not to westward.

Q. If she was eastward of the "Arcona" that you could see across the stern of the "Arcona," must she not necessarily be pointing westward if she was pointing toward the "Arcona"?

A. I don't think, not necessarily, no. She was in the same general direction that she had been on the reef, except for that slight pull.

Q. If you saw her across the stern of the "Arcona," was she running forward to the "Arcona"? [2931—2100] A. In the same general line.

Q. Answer my question—was she running forward to the "Arcona"?

Mr. WARREN.—I submit the answer is perfectly responsive.

The COURT.—I'm not going to rule at this time or make any comment. I simply say that counsel should be courteous.

Mr. WARREN.—I would like the record to show my objection.

Mr. OLSON.—Kindly put this in the record, too. If the Court, please, I seriously object to the inference that I was discourteous to this witness.

The COURT.—Whose inference do you refer to.

Mr. OLSON.—The Court's inference.

The COURT.—I drew no such inference at all and simply made that statement. If it covers the merits,

(Testimony of R. Nelson.)

all right. Simply for future guidance, that's all.

Mr. OLSON.—Now, I would like to have an answer to my question.

Mr. WARREN.—I have no objection that it was asked and answered.

The COURT.—I allow the question.

Mr. OLSON.—Go on and answer the question, Captain.

Mr. WARREN.—Your Honor overrules the objection.

The COURT.—Yes.

A. She was not parallel.

Q. She was not parallel?

A. She was not parallel in the sense that she was alongside; if you mean in the same heading exactly but in a different place, then it might be somewheres near that. Parallel, as I understand it, was alongside.

Q. Then she was not alongside of the "Arcona"?

A. No, sir.

Q. I see. Was her bow not alongside of the stern [2932—2101] of the "Arcona"?

A. No, sir.

Q. Over what part of the stern did you see any part of the "Celtic Chief"? Over what part of the stern of the "Arcona," I'm speaking of.

A. As I remember it, I saw the extreme stern of the "Celtic Chief" over the stern of the "Arcona."

Q. You mean the extreme bow, do you not, of the "Celtic Chief"?

A. No, sir, the stern—she was coming stern first.

Q. Then as you saw her at the time, the stern of

(Testimony of R. Nelson.)

the "Celtic Chief" was visible about over the extreme end of the "Arcona"?

A. I think so, that's as I recollect it now.

Q. And according to your observation, she was heading for the "Arcona" at that time?

A. In that general direction. I would not say exactly. In my mind there was a possibility of a collision.

Q. Then, if that is the case, you couldn't very well have been mistaken to the extent of believing as you say you did that she was about to ram the "Arcona," when, as a matter of fact, the "Mikahala" had already gotten her off to the eastward out of the line of the "Arcona"?

A. I don't know how far out of line.

Q. She couldn't have been very much out of line if you were able to observe her extreme stern over the extreme end of the "Arcona"?

A. I don't think she could have been very far off.

Q. Very few feet, if anything; isn't that so?

A. I think so.

Q. So that the "Celtic Chief" must have approached the "Arcona" almost in a direct line?

A. That's my impression. [2933—2102]

Q. When were the line of the "Helene" and the strain on it let loose from the "Celtic Chief"?

A. I think as soon as she started to come rapidly off. As soon as she came clear of the bottom, off of the reef.

Q. About how far do you think she was from the "Arcona" at that time when the line from the "Helene" was let go?

(Testimony of R. Nelson.)

A. I am unable to say exactly; things move around so quickly.

Q. Four or five hundred feet?

A. Approximately, half our or a third of our length.

Q. About a hundred and fifty feet would you say she had gone, or about three or four hundred feet from the "Arcona," five hundred feet?

A. Say about three or four hundred feet.

Q. From the "Arcona"?

A. Yes, a little less than half our length.

Q. Now, there were no other vessels pulling on the port side of the "Celtic Chief" except the "Helene" and "Likelike" that night? A. That's all.

Q. The only other agencies were the "Mikahala," the Miller Salvage Co., with its anchor, and the "Arcona," in so far as she had lines attached to the "Celtic Chief"; is that correct?

A. I think that's correct; yes.

Q. And the "Arcona" was lying directly astern of the "Celtic Chief," in line with the "Celtic Chief"? A. Almost, not quite.

Q. A slight, slightly to the eastward?

A. Slightly to the eastward. [2934—2103]

Q. And the "Mikahala" was still farther to eastward? A. Yes, sir.

Q. How many times did you observe that the "Celtic Chief" moved and stopped again after she first began to move after eleven o'clock or near twelve o'clock on Wednesday?

A. That was something I couldn't answer.

Q. More than once was it not?

(Testimony of R. Nelson.)

A. She seemed to me to move along several times and stop a little bit, like when a big swell came in to move a little bit more.

Q. You didn't observe that from looking at the vessel itself? A. No, sir.

Q. That was from your range lights?

A. From the lights I had.

Q. And how near was the nearest one of those according to your judgment?

A. They were in the channel; they could be taken off the chart if you want the exact distance.

Q. I don't care about the chart just now. I want your judgment about the distance of those lights.

A. They might have been a half a mile or more.

Q. They might have been a half a mile or more? And the farthest one away?

A. I don't know the exact position of the lights.

Q. It would be considerable farther than the first one?

A. It might have been way over in town somewhere.

Q. Several miles away, perhaps?

A. Perhaps, yes.

Q. Now, then, in order to observe any mild change in those range lights at that distance, it would be necessary for the "Helene" to have moved several feet at least? A. It would. [2935—2104]

Q. Could you observe any mild change if she had moved as little as five or ten feet?

A. Well, I'd say the light—I couldn't say that I

(Testimony of R. Nelson.)

did. I might have been able to have seen that change.

Q. Your experience in noting changes of position from range lights at that distance or a distance approximating this which you had that evening would lead you to the conclusion now that you could make an observation of a change, a mild change if the change of your own vessel was only five or ten feet?

A. I wouldn't like to swear to that as a fact. I might and might not. If one light was exactly in line with the other, possibly, but it's doubtful.

Q. In other words, you think it would require a change of more than five or ten feet for you to observe any mild change? A. I think it would.

Q. Then, if you noted several changes before her final starting to move, she must have moved in the course of all of those changes thirty or forty or fifty feet, must she not, before she finally began to come out quickly?

A. I think a little more than that, if anything.

Q. And those intervals were gradual and comparatively regular, were they, between a quarter to twelve and fifteen minutes after twelve, during that half hour?

A. Fairly regular. I didn't notice any particular times; didn't take any notice of it.

Q. How many times were you on the "Celtic Chief"? A. Twice.

Q. What were you doing there?

A. Looking after the end of my towline.

Q. That was all you were there for? [2936—

(Testimony of R. Nelson.)

2105] A. That was all I was there for.

Q. How long? When did you go on the first time?

A. Tuesday morning, I think.

Q. Tuesday morning? About the time that you took over the line of the "Mauna Kea"?

A. No, sir, later than that.

Q. How much later?

A. I think in the neighborhood of eleven o'clock.

Q. And you went on the second time on Wednesday in the afternoon? A. Wednesday afternoon.

Q. Between two and four o'clock?

A. About half-past two, I think I went there.

Q. Now, the first time that you went on on Tuesday, how long were you aboard?

A. I remained somewheres around a half an hour.

Q. And you were *look* after the end of your line during that half hour? A. Yes, sir.

Q. Pretty busily engaged? A. Yes, sir.

Q. Did you march around the ship to take any observations? A. I walked around.

Q. And on Wednesday afternoon you were pretty busily engaged with the repairing of your line?

A. Yes.

Q. Didn't have much time for running around and making observations of the "Celtic Chief"?

A. Not much time. As soon as I got through my work I went back aboard.

Q. When did you observe the lightering operations?

A. Nearly all the time from the time I started. I saw more or less of it.

Q. Were you making any particular note of the

(Testimony of R. Nelson.)

lightering operations while you were aboard the "Celtic Chief"? [2937—2106]

A. Nothing in particular.

Q. Did you examine any of the boilers?

A. No, sir.

Q. Didn't examine the engines? A. No, sir.

Q. Didn't examine the windlass?

A. I glanced at them. I didn't examine them.

Q. Did you examine the donkey-engine or the winch?

A. Not to make an examination. As I say, I looked at them.

Q. Did you observe what kind of a donkey-engine it was—make or type? A. I did at the time, yes.

Q. What type was it?

A. The type of an ordinary English hoisting engine, as near as I remember it; steam boiler and an engine inside of a house, the aft end of the forward house.

Q. Did you observe the kind of—did you examine the hoisting appliances?

A. Not closely; no, sir.

Q. While you were on board of the "Celtic Chief," did you observe it at all? A. I observed it, yes.

Q. Did you examine the method of operating those appliances while you were aboard of the "Celtic Chief"?

A. I didn't examine them, no. I observed them.

Q. You said that those appliances, that the arm, the hoisting arm, was of such a kind that it could not be raised. Now, why did you say that? How do you know that it could not be raised?

(Testimony of R. Nelson.)

A. Because the man had a turn on a pin on the deck with his rope.

Q. How do you know that?

A. I observed that as I passed by.

Q. While you were aboard of the "Celtic Chief"?

A. Yes, sir. [2938—2107]

Q. Didn't you observe whether or not the "Celtic Chief" didn't have some other method of raising that arm?

A. They had other methods. They could have raised it.

Q. Are you prepared to swear that that arm over the side of the vessel was incapable of being raised or lowered by government from the engine? Are you prepared to say that they didn't have an appliance of that sort? A. I didn't observe any, no.

Q. You didn't observe any, but there might have been, as far as you know?

A. It might have been rigged up afterwards.

Q. It might have been rigged up and in use or capable of being used if any accident happened at any time, as far as you know?

A. No, I don't think it could.

Q. And yet you didn't make any careful examination of the appliance?

A. No, sir, I didn't need to make an examination of it.

Q. You're prepared to swear now that they did not, that they could not hoist and lower that arm with the sling attached to it?

A. Not instantly, no, as it would be required. They would have to take it some other place and take

(Testimony of R. Nelson.)

a hitch around the winch.

Q. How do you know that?

A. That was my impression from what I observed.

Q. But you did not make a careful observation to see? A. A careful examination?

Q. Or careful observation.

A. Just ordinary glancing about as I passed by, that's all.

Q. Did you see that the "Mikahala" had actually pulled the "Celtic Chief" off to eastward somewhat, up [2939—2108] to the time that you observed that she was within twenty or thirty feet of the "Arcona"? Did you make any such observation?

A. I think that I saw that her line was taut and that she was pulling in that direction.

Q. Did you see whether or not the "Celtic Chief" had been pulled further to eastward up to the time that she came within twenty or thirty feet of the "Arcona" as you've testified?

Mr. WARREN.—I object to the question as asked and answered.

The COURT.—Objection overruled.

Mr. OLSON.—Answer the question, Captain.

A. Please read the question again.

(Question read.)

A. I think she was pulled a little to the eastward.

Q. Did you see that? A. I was looking at her.

Q. Had you seen that she moved to eastward up to that time?

A. Well, if I testified that, why, I must have seen it, must have been looking at it.

Q. Then you did, did you?

(Testimony of R. Nelson.)

A. I saw the line that she was—well, I don't know exactly.

Q. Go on and testify.

A. I might say that she was pulled a little to eastward.

Q. And that's what you saw? A. I think so.

Q. When did you first observe that she began to pull to eastward, somewhat?

A. I couldn't testify on that. Things moved around so rapidly at that time that I couldn't fix any particular time.

Q. But she wasn't pulled so much to eastward. According to your observation of it, you thought that if she [2940—2109] had gone twenty or thirty feet further without the "Arcona's" moving, that she would have rammed the "Arcona's"

A. That was my impression of it, yes.

Q. Did you see the "Mikahala" at that time?

A. I could see her lights, I think.

Q. Now, was it ahead of the "Arcona" or did you see her?

A. It must have been on top of the "Arcona."

Q. I'm asking you what you now remember.

A. All the vessels changed their positions pretty rapidly. As I remember it, I saw the "Mikahala's" lights over the top of the "Arcona."

Q. So that, as you were forward of the "Arcona" several hundred feet somewhat to westward, it necessarily follows, does it not, that the "Mikahala" was not forward of the "Arcona," at any time? Isn't that so? A. I think that's right.

(Testimony of R. Nelson.)

Q. Now, did you observe whether she was further off to one side or the other with reference to the "Arcona"?

A. That I couldn't say. She was on the other side. I couldn't judge very well the distance.

Q. How much further was she forward?

A. That I couldn't say.

Q. You have no idea? Was the "Helene" forward of the "Arcona"?

A. Not to my recollection, no.

Q. And you, immediately that the "Celtic Chief" began to come off rapidly, it surged forward, did you go ahead of the "Arcona"?

A. We hove up to our anchors.

Q. But you immediately began to go forward, did you [2941—2110] not? A. Yes.

Q. So, if the "Mikahala," at any time, had been forward of the "Arcona," you would have observed it very well?

A. I think if she had been ahead of her I could have seen her.

Mr. OLSON.—I have no further questions.

Cross-examination on Behalf of MILLER SALVAGE CO.

Mr. WEAVER.—Q. When the "Celtic Chief" was floated, as she came off the reef, in what direction was she pointing with regard to the "Arcona"? In what direction was she moving with regard to the "Arcona"? Directly toward her or one or the other side of her?

A. A little bit to the westward, I think. Slightly

(Testimony of R. Nelson.)

to the westward of the "Arcona's" position.

Q. And what influenced her direction so that she *she* had got as far as the "Arcona" she did not ram her?

A. The pull of the "Mikahala," because the lines had been cut on the port side.

Q. About what speed was she making when she started to move off the reef, being free?

A. That's a pretty hard question to answer. I could only guess at that.

Q. Could you say it was four miles an hour, one mile or ten?

A. Certainly was less than ten. After she got headway she probably might have been going four or five knots an hour.

Q. Did she start with a mild speed and diminish to a less speed or did she increase in speed as she came off? I speak only of the time after she was free.

A. After she was free the lines of the "Helene" and "Likelike" [2942—2111] were cut, consequently her sternway must have diminished somewhat although the "Mikahala" was still pulling.

Q. Did she start with a sudden rush and then diminish speed or not?

A. I think she did. After she came free with the three vessels pulling on her, I think she came with a rush at that time more than later when the lines were cut.

Mr. WEAVER.—That's all.

Mr. OLSON.—I just want to ask one more question. How many propellers has the "Helene"?

(Testimony of R. Nelson.)

A. One propeller.

Q. And only had one at that time?

A. One at that time, yes.

Mr. OLSON.—That's all.

Mr. WARREN.—No further questions.

Recess.

Mr. WARREN.—I ask leave of your Honor to recall Mr. Strolhin in order that I might put to him one or two more questions as to his record and what was done with it on this occasion.

Mr. OLSON.—I object on the ground that counsel has been afforded full opportunity on that point at the time the witness was on before and the very question that is now asked him was then well known to counsel.

The COURT.—I allow the motion.

Mr. OLSON.—Your Honor allows him to be recalled?

The COURT.—Yes.

**[Testimony of C. H. Strolhin, for Libelants
(Recalled).]**

C. H. STROLHIN, recalled.

Mr. WARREN.—Mr. Strolhin, you have already testified in this case that you were on duty from twelve [2943—2112] o'clock, midnight of December eighth, the night that the "Celtic Chief" came off. I'll ask you if during that watch you made any record of the movements of the ship's engine.

A. Why, I made a record of the time I went on watch, the time I stopped the engines.

Q. What kind of a record?

(Testimony of C. H. Strolhin.)

A. I made a record in a note-book which was kept and turned over to the chief, kept by the chief.

Q. That record contained what?

A. Contained the revolutions, the time and orders from the bridge by telegraph.

Q. And after that watch was over, what did you do with that record?

A. I turned that over to the chief in the morning. He made a copy of that and put it in the official log.

Q. Have you seen your record since?

A. No, I have not.

Mr. WARREN.—That's all.

Cross-examination.

Mr. OLSON.—Did you see the chief copy that record? A. Yes, I did.

Q. You remember now, do you, that you saw the chief copy the record of that particular day in his log-books? A. I was sitting at the table.

Q. For what day? A. That day.

Q. What date? A. The ninth of December.

Q. But you don't remember anything with reference to any other time except the ninth of December?

A. I remember he copies the log every day. [2944—2113]

Q. Did you see him copy anything except for that day any other day? A. I saw him copy his log.

Q. For any other day?

A. I saw him pretty near every day.

Q. Have you seen him copy the log every day?

A. Not every day.

Q. You don't remember whether you saw him copy the fifth, sixth, seventh, and eighth, on the one side of

(Testimony of C. H. Strolhin.)

the ninth, and the tenth, eleventh, and twelfth on the other side of the ninth?

A. I remember that he copied the ninth.

Q. But you don't think that he copied them on those other days?

A. I might not have been present on the ship when he did it; no.

Mr. OLSON.—That's all.

Redirect.

Mr. WARREN.—You say that on December ninth you saw him copy the record. A. Yes.

Q. Now, what was it that he copied into the record on December ninth?

Mr. OLSON.—I object to the question on the ground it is improper redirect.

The COURT.—I allow the redirect.

Mr. OLSON.—If that is the case I don't think your Honor should limit my cross-examination. I want to reopen my cross-examination.

The COURT.—I will allow you to do so.

Mr. OLSON.—You testified, did you not, that it was your record of the ninth of December that you saw copied into the log-book by the chief? [2945—2114]

A. Well, I'll state this. In regards to it being the eighth or the ninth, we figure the day from twelve o'clock at night.

Q. That is what I understand, too. You went on duty at twelve o'clock?

A. I went on duty at twelve o'clock.

Q. It was the record from twelve o'clock onward

(Testimony of C. H. Strolhin.)

that you saw copied into the log?

A. I saw that record copied.

Q. And that's what you were talking about? Was that the date of the eighth or ninth? I'll state that the "Celtic Chief" came off the night of Wednesday, December eighth or the morning of the ninth.

A. That's the day, December the ninth, that I'm talking about.

Q. And that's the day you are talking about when you say you saw the record of that day copied by the chief?

A. I don't know how much of it he copied. There was two or three days copied, probably.

Q. But you don't know of anything else?

A. I know that was copied.

Q. You don't know of any other days except for that period?

A. Oh, yes, he copied through the preceding watch.

Q. Do you know that you saw him copy that on that next day?

A. Yes, I know I did. He showed me, he said, "Strolhin, this is not right."

Q. Are you changing your testimony or supplementing it? A. I'm telling you what happened.

Q. If you saw testimony copied by the chief into the log-book, now, was it for the eighth of December or ninth of December?

A. It was the watches up [2946—2115] to this, eighth and ninth.

Q. You saw them both copied in?

A. I saw him sit down; he said, "You bring your log-book." I said, "Yes, here is the log-book."

(Testimony of C. H. Strolhin.)

Q. Did you actually see him copy sentence for sentence? A. I saw him write it down.

Q. You didn't see him copy it?

A. I'm not supposed to read his log.

Q. Did you see him copy it?

A. No. The man is not going to sit there and copy incorrect.

Q. The question I'm asking you is whether or not you compared what he copied in his log-book with what you had in your note-book?

A. No, I'm not supposed to do it.

Q. I'm asking you whether you did.

Mr. WARREN.—He said no. I submit it's answered.

Q. So you don't know whether or not he copied it correctly, of your own knowledge, do you?

A. Well, you've got his word for that.

Q. I'm asking you if you know of your own knowledge now. Kindly answer the question as you are obliged to do.

Mr. WARREN.—I submit that is improper cross-examination.

Mr. OLSON.—I'll withdraw the latter part of that question and ask the Court to instruct the witness to answer my question.

The COURT.—I think the witness understands that. Give Mr. Olson a direct answer.

A. I tell you, Judge, it's this way. Sometimes you can't remember everything exactly. I tell what I remember, that's all.

The COURT.—I will allow the question.

Mr. OLSON.—Now, let us have your direct answer

(Testimony of C. H. Strolhin.)
to the [2947—2116] question.

A. What is your question?

Q. Did you compare what the chief wrote down in his log-book with your notes? A. No, I did not.

Mr. OLSON.—That's all.

Mr. WARREN.—That's all. Anything, Judge Weaver?

Mr. WEAVER.—No.

[Testimony of W. B. Lycett, for Libelants.]

Direct examination of W. B. LYCETT, a witness called on behalf of Inter-Island Steam Navigation Co., and sworn.

Mr. WARREN.—What is your occupation, Mr. Lycett? A. Marine engineer.

Q. And how many years have you been marine engineer? A. About fifteen years.

Q. And in December, 1909, when the "Celtic Chief" was on the reef, where were you engaged?

A. I was chief engineer of the "Helene." Chief engineer of the steamboat "Helene."

Q. And what was *you tide* of duty? At what time were you on duty? A. At all times, mostly.

Q. What time on watch in the engine-room?

A. From eight to twelve; that was my watch.

Q. And what time on Wednesday evening and Wednesday night?

A. I was on watch on Wednesday night from eight to twelve.

Q. December 8? A. I was on watch.

Q. And, that being the night the "Celtic Chief" came off the reef, did you make any record of the

(Testimony of W. B. Lycett.)

movements of the engine while on watch?

A. I always do.

Q. And how did you make that? [2948—2117]

A. Put it down in the log. We must keep an official log, keep a record of all things that happen in the engine-room.

Q. What record in the engine-room itself?

A. We always keep the log or revolutions, steam pressure, gauge—

Q. Just how do you keep that?

A. We always keep a book down there for the assistants each watch to put their watch down, log their own watch and from that I transfer.

Q. That's the assistants?

A. My own log I do the same.

Q. Have you the log of the "Helene"?

A. I have it.

Q. Will you produce it?

A. It's outside the door there.

Q. Independently of the log and without looking at it at all, have you any remembrance of the speeds of the engine and variations of the engine on Wednesday night?

A. Yes. It was going full speed from about eleven o'clock until she came off. There's times there that she did vary a little bit.

Q. Before or after eleven o'clock?

A. Before eleven.

Q. Before eleven?

A. Before eleven o'clock. Of course, I haven't made no record of that in the log. From eleven o'clock on we had full speed.

(Testimony of W. B. Lycett.)

Q. At what time did she come off?

A. According to my log, twelve twenty-two when she come off.

Q. Twelve twenty-two?

A. Twelve twenty-two A. M.

Q. When did you go off duty?

A. How's that? [2949—2118]

Q. When did you go off duty Wednesday night?

A. Thursday morning; twelve twenty-two she come off.

Q. She came off, then, before your watch ended?

A. Twelve o'clock we ended.

Q. Your watch having ended, what did you then do? Where did you go?

A. I went up on deck right next to the skylight.

Q. Skylight over where?

A. Above the engine-room.

Q. How long did it take you to get up there?

A. It took me about two minutes, I guess, on the outside. I wasn't up there in a rush up; I just walked up.

Q. Having gotten there, did you ever make any observations as to the engine?

A. I did. I was watching the engines all the time. All the time I was watching the boat I was keep my eye on the engine mostly.

Q. Do you know whether or not, after twelve, midnight, there was any change in that engine?

A. I think she come off—

Q. Prior to the ship coming off? A. No.

Q. Was there or was there not? A. No.

Q. You said there was not?

(Testimony of W. B. Lycett.)

A. Bound to slow down when the engine is towing that way, bound to slow, the engine is bound to slow down if she's got a tow behind her.

Q. If there had been a change of throttle would you have noticed it? A. I'd have notice.

Q. Would you have known it?

A. I would have.

Q. How?

A. The sound of it and I can see the throttle from the skylight. [2950—2119]

Q. Who had the watch immediately after twelve that night? A. Mr. Reid.

Q. What is his first name?

A. Tom. I don't know his second.

Q. Do you know where he is now? A. I do not.

Q. Have you any idea if he is in this territory?

A. I'm pretty sure he is not.

Q. What?

A. I'm pretty sure he is not here.

Q. How long since you've seen him?

A. Since I joined the "Nooheau"; that's about a year and nine months ago.

Q. Is this the log of the "Helene" to which you have referred? A. That is the log.

Q. Referring, now, to the entries of December 7, 8, and 9, I'll ask you in whose handwriting they are.

A. Mine.

Q. When did you make those entries?

A. The day after we come off, on the tenth, copying from the slips from the engine-room.

Q. Now, referring to the entries having to do with the watch from twelve o'clock midnight of December

(Testimony of W. B. Lycett.)

8 to early morning of December 9, I'll ask you where did you get the facts upon which those entries were made.

A. From the second assistant engineer. He enters his log on a slip and I get that and enter it into the books after twenty-four hours, as you notice here.

Q. Every four hours? How long watches were they? A. Six, three watches.

Q. You had two assistants?

A. Yes; two assistant.

Q. Three watches, three four hour watches.

Q. Now, the notes that you made from memoranda on the paper slips from the engine, in the engine-room for the watch of the first assistant—

A. Second assistant.

Q. Second assistant from twelve o'clock midnight, do you know [2951—2120] whether or not they are correctly transcribed into this book?

A. Yes, I believe they are copied right.

Q. Did you compare them? A. I did.

Q. Then you can swear that this log, as to those watches, is an absolutely correct copy of all that was indicated on those slips? Prior to eleven o'clock of the night of December 8 at which time you say you went full speed, at what speed was the engine running? A. About three-quarter speed.

Q. For how many hours prior to eleven?

A. I was on watch from eight to eleven; then I hit her up full speed, all I could get out of it.

Q. During your watch up to eleven, it was three-quarters?

(Testimony of W. B. Lycett.)

A. About three-quarters. It was running pretty good speed; you could get a little more out of her.

Q. Were there any stops made from the beginning of your watch? A. On that particular night?

Q. That night?

A. No, there was no stops made on that watch.

Q. Have you any recollection as to the operation of this engine prior to 8 P. M. of December 8 without your referring to this log?

A. Yes, I do. We had to stop down once, to slow down.

Q. About what time of day was that?

A. About noontime.

Q. Of Wednesday? A. Of Wednesday.

Q. The last day. Any other stops between then and midnight? A. Not that I remember.

Q. Now, during Monday, during Tuesday, have you any recollection independently of this log as to how the engine was running?

A. It was running sometimes full speed, sometimes three-quarter speed, sometimes I had to slow down, something of that sort.

Q. Do you remember what times it was slow—reduced, and full?

A. I don't remember; three-quarters speed most of the time.

Q. How with respect to tides?

A. There were times there that they were waiting for the tide to [2952—2121] come and just kept the line taut, clear until the time to tow. There was no use of towing on it. Still I haven't got that all down.

(Testimony of W. B. Lycett.)

Q. Have you any recollection as to the tides on that day? A. I have not.

Q. Do you know what time it would be high tide that night?

A. I do not remember. Don't know anything about it.

Q. Can you, by looking at this log, recall to your own memory anything further, so that having looked at it you can recall to your mind and testify independently of the record what rate the engine ran during all of Wednesday prior to 8 P. M.?

A. Yes, I remember that.

Mr. OLSON.—During all of Wednesday, prior to 8 P. M.

A. All of Wednesday.

Mr. WARREN.—Yes, including stops and approximately what part of the time reduced speed and what time full speed.

Mr. OLSON.—I submit the witness has already answered he was only on watch from eight to twelve and he couldn't answer.

Mr. WARREN.—I now desire to offer in evidence the log, your Honor, practically for the 6th, 7th, 8th, and 9th days of December, 1909, as identified by this witness.

Mr. OLSON.—I object to the offer if the Court please, on the ground that it's hearsay and a self-serving declaration; furthermore, on the ground there is no foundation; further, it is incompetent, irrelevant, and immaterial.

Mr. WARREN.—I'll say, more particularly as to the entries of the watch beginning 12 midnight of

(Testimony of W. B. Lycett.)

December 8, it appearing from the testimony of this witness, your Honor, that the second assistant, engineer Reid, who made this record which has been transcribed, is now out of the territory.

The COURT.—It will be marked for identification subject to the same ruling as the other.

(Marked Exhibit "N," Lycett, for Identification.)

Q. Do you know the horse-power of the "Helene," Mr. Lycett.

A. 470. [2953—2122] Average of about 465 or 470. Between 465 and 70.

Q. Do *you when* the last card was taken?

A. I do not.

Q. Did you take any yourself? A. I have not.

Q. How do you know the horse-power?

A. The record. I have never taken the indicated horse-power.

Mr. OLSON.—What?

A. A record I've never taken cards. I've figured it out.

Mr. WARREN.—Cross-examine. One moment. What is your licensed steam capacity?

A. 1500 ton.

Mr. WARREN.—Cross-examine.

Cross-examination of W. B. LYCETT on Behalf of Libellee.

Mr. OLSON.—When you say that her horse-power is between 465 and 70, do you mean that that is her indicated horse-power?

A. Yes, that's the horse-power.

Q. What was the gauge pressure shown between 11 and 12 o'clock of Wednesday night?

(Testimony of W. B. Lycett.)

A. Between 155 and 160.

Q. Pounds? A. Pounds.

Q. How much is she entitled, how much pressure is she entitled to under her license?

A. 160 pounds.

Q. How many revolutions per minute were her engines making between 11 and 12?

A. On the average about 115 or 17.

Q. Between 115 and 17 per minute? A. 17.

Q. 115 and 117. How many revolutions per minute while she's running free does she make?

A. Average 125 or 26.

Q. Do you mean to say that there was only a reduction of about 8 or 9 or 10 revolutions per minute from what she does running free *she* she was *tide* up there? A. She turns up 134 or 137.

Q. Did you observe that she was making 115 or 17?

A. I believe there's the log there. I don't remember now. And that average at that time 115 or 117 is as far as I can [2954—2123] remember.

Q. How many propellers did the "Helene" have?

A. One.

Q. And what is the diameter of that propeller?

A. I don't remember.

Q. Don't know the pitch of that propeller?

A. 9 feet, 6 inches.

Mr. OLSON.—That's all.

Mr. WEAVER.—No questions.

Mr. WARREN.—That's all.

[Testimony of James Devlin, for Libelants.]

Direct examination of JAS. DEVLIN, a witness called on behalf of Libellants Inter-Island Steam Navigation Co., and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. What is your occupation, Mr. Devlin? A. Sir?

The COURT.—Your occupation.

A. Engineer.

Q. How long have you been an engineer?

A. Engineer? Since I've been in the business?

Q. Yes. A. About forty years.

Q. And in December, 1909, when the "Celtic Chief" was on the reef out here where were you employed? A. I was employed on the "Mikahala."

Q. What position? A. Chief engineer.

Q. What were your watches?

A. My watch? From six to twelve A. M. in the morning, from six to twelve P. M. at night.

Q. And on the night of December 8 when the "Celtic Chief" the night of the day that the "Celtic Chief" came off the reef, you were on duty from six to twelve? [2955—2124]

A. From six to twelve; yes.

Q. Now, can you remember anything about the operation of that engine that night during your watch? A. The first night?

Q. Wednesday night.

A. Wednesday night I remember going ahead on her full speed at 11:30 P. M.

Q. How do you remember that?

A. I remember that from the captain singing

(Testimony of James Devlin.)

down—let me see; captain spoke out, “Full speed ahead.”

Q. How did he give you the various orders for working the engine? A. For working the engine?

Q. Yes.

A. When *we taking* the lines, parcelling the lines, he would shout down.

Q. How do you remember that the order for full speed was given to you by the captain at eleven-thirty that night? How do you remember it was that time?

A. I remember that because when he told me ease up on the engines that’s all I remember.

Q. Did he tell you to ease up? A. Ease up.

Q. At eleven-thirty?

A. No, no, not eleven-thirty. Told me to work up full speed.

Q. What time? A. Eleven-thirty.

Q. How do you remember it was eleven-thirty?

A. I looked at the clock at the time he spoke to me.

Q. How had you been running just prior to eleven-thirty? A. Reduced speed.

Q. What do you mean by reduced speed?

A. Eased up on the engines.

Q. Approximately what is that? What speed—quarter, half, three-quarters?

A. About three-quarters.

Q. About what?

A. About three-quarters speed.

Q. How long had you run on reduced speed prior to eleven-thirty, without any change?

A. I ain’t sure exactly how long. [2956—2125].

Q. Well, can you tell us approximately?

(Testimony of James Devlin.)

A. From seven o'clock. I wouldn't say to that.

Q. Seven o'clock is your best recollection?

A. Yes. From seven to eleven-thirty.

Q. No change at all between seven-thirty or approximately seven-thirty up to eleven-thirty?

A. Nothing at all.

Q. When you went on duty at twelve or rather when you left your watch at twelve midnight, how was the engine running then?

A. I run her running full speed ahead.

Q. Where did you go immediately following midnight that night? A. I went between decks.

Q. Where?

A. On the lower deck right alongside the boiler-room, engine-room.

Q. For what purpose?

A. There was something on fire by the ———; what it was I couldn't make out.

Q. You paid no more attention to the engine then?

A. No more as long as she was going.

Q. Do you know whether or not there was any change in the running of the engine after midnight, say half an hour?

Mr. OLSON.—Object to the question on the ground that it appears that the witness paid no attention to the engines after that time save for the fact that they were running. I submit he has already answered the question.

The COURT.—Let's see what he means. When you said that after twelve o'clock midnight you paid no attention to the engine what did you mean?

A. I mean I was up on the upper deck looking at

(Testimony of James Devlin.)

them there vessels there.

Q. After you left the engine-room at midnight you say you were paying no particular attention to the engine. Would you know if there were any change in it? A. Yes, I would know right away.

Q. How would you know?

A. I know by the sound of an engine.

Q. Does it make any difference what part of the ship you are in? [2957—2126]

A. It doesn't make any difference what part of the ship you are in.

Q. Now, can you tell whether or not after twelve o'clock midnight you noticed any change in the running of the engine? If so, when?

A. I should say the engine was eased up about twelve twenty-two or twelve twenty-three.

Q. Have you any remembrance of the engine slowing up after midnight? A. Only that time.

Q. How did you take note of the time then?

A. My watch.

Q. Where were you? A. Right between decks.

Q. You remember all this independently of the log itself? A. Independently, yes.

Q. What is your licensed steam capacity for the "Mikahala"? A. My license?

Q. No, the licensed steam capacity?

A. Four hundred horse. That was four hundred horse-power.

Q. What is the pressure?

A. 85—85-pound pressure.

Q. How do you know the horse-power of the "Mikahala"? A. I'd have to figure that out.

(Testimony of James Devlin.)

Q. Have you figured it out?

A. I have figured it out. I haven't figured it out for some time.

Q. What did you figure it at?

A. 404 horse-power.

Q. How long ago about?

A. Oh, about a year, year and a half ago, I figure it out but I got the wrong numbers. A year after that I went over it again and I seen it was 440, I believe. It come down to 404.

Q. Has there been any change in the engine since the time the "Celtic Chief" was on the reef?

A. No changes at all, only repairs to the boiler and repairs to the machinery.

Q. Does that make any difference to the horse-power? A. No, sir.

Q. Do you know the pitch of the "Mikahala's" propeller? A. 13 foot.

Q. And do you know the diameter?

A. Diameter is 9 foot eight. [2958—2127]

Mr. WARREN.—Cross-examine.

Cross-examination of JAMES DEVLIN on Behalf of Libellee.

Mr. OLSON.—Q. How many revolutions per minute did your engine make from eleven-thirty until twelve o'clock Wednesday night?

A. Eleven-thirty until twelve o'clock?

Q. Yes.

A. Make 78 as near as I can come to it.

Q. Seventy-eight per minute? A. Yes, sir.

Q. How many revolutions would those engines make at that time running free? A. 86 or 87.

(Testimony of James Devlin.)

Q. Do you mean to say—

A. I made a mistake there. She makes 65.

Q. And how many revolutions running free?

A. 87, 86 or 87.

Q. And did you observe that it was making that during that time from 11:30 to 12:00?

A. Yes, sir.

Q. Was her indicated horse-power at that time 404? A. What is that, sir?

Q. Was her indicated horse-power at that time 404?

A. Her indicated horse-power? I haven't got that.

Q. What was her horse-power at that time?

A. I have to work it out.

Q. What is that?

A. I have to work out all the figures. I haven't got no indicator.

Q. And you worked it out to be how much?

A. 404.

Q. And that was her horse-power at the time she was towing on the "Celtic Chief"?

A. That was her horse-power.

Q. At that time?

A. At that time. That was her horse-power at that time.

Q. It wasn't more than that, was it?

A. I couldn't say that. It might have been. No, it was no more; it wouldn't be more than 404.
[2959—2128]

Q. Now, did the gauge show that she had 85 pounds of steam pressure during that half hour that

(Testimony of James Devlin.)

you were running full speed?

A. From 80 to 85. I allowed her 80.

Q. What is she licensed to carry? What amount of pressure? A. 85.

Q. That's the limit? A. That's the limit.

Q. And during that half hour she maintained—

A. She'd rise up to the gauge.

Q. 80 or 85? Was it 85 or 80?

A. 80 or 85. 85 is her average from 11:30 until 12:00.

Q. You said the pitch of her propeller was thirteen feet? A. Thirteen feet.

Q. And the diameter 9 foot 8? A. 9 foot 8.

Q. And that is the propeller she had at that time?

A. That's the propeller, yes.

Q. Did she have more than one propeller?

A. That's all, only one.

Mr. OLSON.—That's all.

Mr. WEAVER.—No questions.

Mr. WARREN.—The watch of the chief began 8 P. M. Wednesday night and the watch of the second assistant, Reid, began 12 midnight, the watches being four hours each. I'll simply make a statement that I've made inquiries and, as far as I can ascertain, Reid is at the coast. Captain Haglund can swear to that, if necessary.

[Testimony of Frank C. Poor, for Libelants.]

Direct examination of FRANK C. POOR, a witness called on behalf of Libellants Inter-Island Steam Navigation Co. and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. Mr. Poor, in December, 1909,

(Testimony of Frank C. Poor.)

what was your occupation? [2960—2129]

A. Clerk on the Inter-Island wharf.

Q. What were your duties?

A. Duties were to supervise the receiving and delivery of freight from the various steamers; also to pay off the crews of the respective steamers.

Q. Did you have anything to do with the paying of the crew of the steamer "Mikahala"?

A. I have.

Q. For the week in which operations were conducted out at the "Celtic Chief"? A. Yes, sir.

Q. I'll show you a pay-roll in this book of paid bills of the Inter-Island Steam Navigation Co., Ltd., and ask you if you can identify this paper.

A. I can.

Q. What is it?

A. A true pay-roll of the steamer "Mikahala," December the 3rd, 1909.

Q. Was it from the regular pay of the crew? Were any other payments made?

A. Yes, there was payments for sixteen hours overtime also.

Q. As appears by this pay-roll? A. Yes, sir.

Q. In whose handwriting is this, do you know?

A. The handwriting of the pay-roll? Mr. Harvey —Frank Harvey.

Q. Who paid the men? A. I did.

Q. And have you any personal knowledge of the items of overtime that are set out on this page and paid?

A. Nothing more than it was for overtime paid in operations performed on the "Celtic Chief."

(Testimony of Frank C. Poor.)

Q. How much in all was paid to the crew of the "Mikahala" for overtime? A. \$160.00.

Q. Whose signature is this over the sum paid?

A. That's my signature.

Q. When did you put that on?

A. After paying the crew, after the crew were paid.

Mr. OLSON.—I have no objection to the witness testifying without the pay-roll itself being put in, that there was \$160.00 [2961—2130] overtime paid to the "Mikahala" crew for services at the "Celtic Chief."

Mr. WEAVER.—I admit that.

Mr. WARREN.—That's all, then, Mr. Poor.

Mr. OLSON.—I'll admit that the Inter-Island Steam Navigation Co. can show that they paid \$76.00 for overtime paid to the crew of the "Likelike" for services performed in connection with the "Celtic Chief" operations.

Mr. WEAVER.—On behalf of the Miller Salvage Co. I make the same admission.

Mr. OLSON.—I make the same admission with reference to the "Helene" in the sum of \$120.00.

Mr. WEAVER.—On behalf of the Miller Salvage Co. I admit \$120.00 was paid for overtime on the "Helene."

Mr. OLSON.—I make the same admission with reference to the "Mauna Kea" in the sum of \$100.00.

Mr. WEAVER.—Make the same admission for the Miller Salvage Co.

Mr. OLSON.—I will admit that the Inter-Island Steam Navigation Co., Ltd., can show that they paid the sum of \$1,059.00 for services performed by steve-

(Testimony of Frank C. Poor.)

dores lightering and discharging cargo of the "Celtic Chief."

Mr. WEAVER.—The Miller Salvage Co. makes the same admission.

[Testimony of C. J. Campbell, for Libelants.]

Direct examination of C. J. CAMPBELL, a witness called on behalf of Libellants Inter-Island Steam Navigation Co. and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. What is your business, Captain?

A. Manager of Inter-Island Steamship chandlery department.

Q. Have you any knowledge of materials furnished from the ship chandlery of the Inter-Island Steam and Navigation Co. to the steamer "Helene"?

A. Have.

Q. Will you state on what occasion they were furnished and what [2962—2131] they were?

A. In 1909, October, when the "Celtic Chief" was ashore, we furnished the steamer "Helene" with one coil of seven-inch manilla rope.

Q. How many fathoms in that coil, Captain?

A. One hundred and twenty-five.

Q. Do you know the weight? A. Not offhand.

Q. Have you made any memoranda? A. I did.

Q. About that? A. I did at that time.

Q. Is this the memoranda to which you refer?
(Handing witness a piece of paper.)

A. Yes, that is the memoranda I made at that time.

Q. Now, does this memorandum serve to refresh

(Testimony of C. J. Campbell.)

your memory as to what were furnished to the Inter-Island vessels in the way of hawsers? A. Yes.

Q. Well, now, with this memorandum, can you testify what the weight of the hawser furnished to the "Helene" was?

A. Yes, according to this 1112 pounds.

Q. Now, the "Mauna Kea"?

A. "Mauna Kea," 3542.

Mr. OLSON.—What's that?

A. That's 12-inch.

Mr. WARREN.—One coil?

A. One coil.

Q. 12-inch manilla? A. Manilla rope.

Q. The "Likelike"? A. One 8-inch, 1469.

Q. "Mikahala"?

A. Two coils of 8-inch, 3,000 pounds; that's 1500 pounds to a coil.

Q. Making a total weight of hawsers furnished to the four vessels 9,123 pounds? A. Yes.

Q. What is the—have you bought and sold manilla hawsers? A. Yes.

Q. For how long?

A. Ten, eleven or twelve years.

Q. Do you know the market value of manilla hawsers in December, 1909? A. Yes.

Q. How much?

A. We were selling rope, manilla rope at 11¢ per pound; that's in coils.

Q. In the coil? A. In the coil. [2963—2132]

Q. Now, have you any knowledge of any—I'll withdraw that. When were these coils furnished to these vessels?

A. At the time that the vessel "Celtic Chief" was

(Testimony of C. J. Campbell.)

stranded here, at the beginning of it. The orders used to come in from the superintendent, Captain Haglund, to furnish such and such rope for such a steamer and orders were filled according to his instructions.

Q. How do you know that these were furnished for service on the "Celtic Chief"?

A. Well, it was delivered to them for that purpose. They went out to the working vessels with those ropes at the time.

Q. Any other materials furnished to the "Mikahala"?

A. Yes, there was an anchor and chain. I am not positive of the weight of the anchor. There was an anchor and chain which had to be replaced to the "Mikahala" on account of loss of anchor and chain at the "Celtic Chief."

Q. Did you make any memoranda about that?

A. Yes, that's my handwriting; that is inch and a quarter chain.

Q. That is the anchor and chain to which you refer? A. Yes.

Q. Can you give us now the weight of the anchor and the number of fathoms of chain?

A. That's the number of fathoms, 15 fathoms of chain, inch and a quarter chain, 91 pound to the fathom which makes 1365 pounds.

Q. Have you bought and sold anchor-chain?

A. I have, sir.

Q. Do you know the value of anchor-chain in December, 1909, that size?

A. Yes. Chain was sold at 6¢.

(Testimony of C. J. Campbell.)

Q. Do you know approximately the weight of that anchor?

A. Well, I can't say exactly; probably in the neighborhood of maybe sixteen or seventeen hundred pounds. That's about her size of anchor that she uses, working anchor; 16 or 1700 pounds, along in that line.

Mr. WARREN.—Cross-examine. [2964—2133]

Cross-examination of C. J. CAMPBELL on Behalf of Libellee.

Mr. OLSON.—Q. Captain Campbell, will you state what this manilla rope cost the Inter-Island Steam Navigation Co.? Oh, I withdraw that. The ship chandlery department of which you are manager is a department carried on by the Inter-Island Steam Navigation Co., Ltd., is it not?

A. Yes, sir.

Q. So that it is a part of the business of the Inter-Island Steam Navigation Co., Ltd.? A. Yes.

Q. What does manilla rope cost the Inter-Island Steam Navigation Co. in its warehouse?

A. At that time?

Q. Yes.

A. Without looking over the books, it would cost somewhere in the neighborhood of probably 9 or 9½¢. I wouldn't swear to that.

Q. It would be somewhere in the neighborhood of 9 and 9½¢? A. Yes.

Q. But 11¢, the retail price, is the retail price at which you sell it? A. That's by the coil.

Q. Well, this was furnished by the coil, was it not?

A. Yes, sir, in original packages.

Q. Now, at that time, what did anchor-chain cost

(Testimony of C. J. Campbell.)

the Inter-Island Steam Navigation Co. in its warehouse?

A. I couldn't say without looking at the books.

Q. Have you no idea?

A. Yes, it cost somewhere about probably close on to 5¢.

Q. Five cents?

A. Or in that vicinity. I wouldn't say exactly.

Q. About 5¢ per pound? A. Yes.

Q. The same for anchors?

A. The anchors cost, our anchors, they are made for ourselves, our own pattern.

Q. You said this anchor was 7¢ a pound?

A. The anchors would probably. I wouldn't say offhand, but it would cost somewhere in the neighborhood of probably 5½¢. It [2965—2134] depends upon where you bought those because sometimes we pay seven cents for anchors we have sold at six. The market fluctuates.

Q. Do you know what became of these manilla ropes that were furnished to these various steamers after they had been used in connection with the "Celtic Chief" operations? A. I do not.

Q. As far as you know they are still retained by the vessels which used them?

A. I couldn't tell you.

Q. They were furnished to those boats?

A. They were furnished to those boats, yes.

Q. You can't say that those boats in the course of the "Celtic Chief" operations wore them out or lost them or anything of that sort? A. No.

Q. Do you know whether or not the anchor that

(Testimony of C. J. Campbell.)

was lost at the "Mikahala" has ever been recovered?

A. I could not say.

Q. You don't know? A. No.

Mr. OLSON.—That's all.

[Testimony of Norman E. Gedge, for Libelants.]

Direct examination of NORMAN E. GEDGE, a witness called on behalf of Libellants Inter-Island Steam Navigation Co., Ltd., and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. Mr. Gedge, what's your business?

A. I am treasurer and secretary of the "Inter-Island Steam Navigation Co., Ltd.

Q. Have you any personal—and were such in 1909, December? A. Yes, sir.

Q. And have you any knowledge of any accounts paid out by the Inter-Island Co. on account of operations at the "Celtic Chief"?

A. I have. [2966—2135]

Q. Can you state from your memory what they were?

A. Well, I can state that we paid Young Bros. an amount and also McCabe, Hamilton, and Renney; a number of amounts to Smith & Lewis and some other amounts for launch hire.

Q. How much did you pay Young Bros.?

Mr. OLSON.—I object, unless it first appears that it is for something in connection with the "Celtic Chief" operations.

A. It is something that I actually handled myself. I paid Young Bros. \$150.00.

Mr. OLSON.—What?

(Testimony of Norman E. Gedge.)

A. I paid Young Bros. \$150.00.

Q. Have you any memorandum about that?

A. I had one that I turned over to you.

Q. Is this the memorandum to which you refer, that \$150.00 item? (Handing witness paper.)

A. Yes.

Q. Does that recall to your mind just what that payment was? A. Yes.

Q. Who actually paid the money?

A. I did.

Q. Will you state just what that payment was for?

A. That was for services of the launch at the "Celtic Chief," pulling wires and lines, taking men in and out.

Mr. OLSON.—The Inter-Island officials.

A. It was for the services of us at the "Celtic Chief."

Q. On what date was that payment made?

A. This payment was made under date December 9; the bill is December 6.

Q. This \$15.00 item that you've referred to McCabe, Hamilton, & Renney?

A. That was for the use of the scow with the donkey-engine on.

Q. Do you know who paid that bill?

A. Yes. I paid it. I think you have the bill.

Q. Any other expenses that you know of than these two you've testified about?

A. Yes, I believe there is an amount of [2967—2136] about \$10.00 paid out for some diving but I didn't get any vouchers for that, in connection with some rope that twisted around the propellers. We had to send a man down to take the rope off. I didn't

(Testimony of Norman E. Gedge.)

get any voucher for that.

Q. Do you know yourself whether payment was made? A. I do.

Q. You didn't make it yourself?

A. I turned it over to our shipping master to pay. I know the—

Mr. OLSON.—I move to strike what was told to the shipping master.

A. I know the man performed the services and got the money, but I have no voucher from the man to show for it.

Q. Who was the shipping master?

A. I think it was Frank Harvey in one case and Mr. Brown in the other. Two men did the diving and they got \$5.00 a piece. There was one other amount that Mr. Kennedy paid out of his pocket for boat hire.

Q. Who paid that money?

A. Kennedy paid it out of his pocket and got it from me.

Q. From you as treasurer?

A. Yes. He didn't get any receipts for any and consequently I have no voucher.

Q. Those are all you are able to recall?

A. Yes, that's all.

Q. Did you see this diving done yourself?

A. No, I did not.

Q. As far as the diving services are concerned, your knowledge is from reports of others?

A. Yes.

Q. Did you pay the money yourself?

A. I paid the money myself.

Q. To the divers?

A. Not the divers. The men came to the office and

(Testimony of Norman E. Gedge.)

asked for it and I referred them to the shipping master.

Q. Did you see the money paid to them?

A. I think not. I have a voucher for that in my bills paid book. [2968—2137]

Q. Did you see that paid yourself?

A. I have an idea that I did, but I won't say. I know they got the money.

Q. You know that by records of others?

A. Yes.

Mr. OLSON.—I move to strike all testimony with reference to the \$10.00 payment for diving on the ground it is hearsay.

The COURT.—I grant the motion.

Q. Now, with reference to this \$10.00 payment that you've testified to concerning hire of a boat by Mr. Kennedy, did you see Mr. Kennedy pay that \$10.00?

A. I got Mr. Kennedy's approval on the voucher.

Q. And you don't know whether Mr. Kennedy paid that amount? A. Not personally.

Q. Based on hearsay entirely? A. Yes.

Mr. OLSON.—Move to strike all that testimony on the ground it is based on hearsay.

The COURT.—Motion granted.

Q. In this Young Bros. launch item, \$150.00, I believe that a part of that was for taking officials back and forth also, was it not?

A. It was for services performed by them taking laborers out, running lines—

Q. Taking officials back and forth also?

A. Whatever the bill states there.

Q. This was partially for transporting officials,

(Testimony of Norman E. Gedge.)

was it not? A. That's what it states there.

Q. That's correct, is it as far as you know?

A. I know Mr. Kennedy went out there and he went with Captain Campbell and Captain Haglund.

Q. You know also Mr. Dowsett went out there?

A. Yes.

Q. And Mr. Lewis at that time one of the attorneys for the Inter-Island Co., and Mr. Wilcox, one of the directors of the company?

A. It may be. [2969—2138]

Q. You don't understand that Mr. Wilcox or Mr. Dowsett had anything to do with the salvage of the "Celtic Chief"?

A. Except that they are directors of the company and are stockholders of the company and interested to that extent.

Q. You don't know what part of this bill of \$150.00 is made up of compensation for transporting officials?

A. It would be a very small amount.

Q. Do you know how much? A. No.

Mr. OLSON.—That's all.

Mr. WEAVER.—No questions.

Mr. WARREN.—I offer at this time, your Honor, to supplement the testimony by showing that the launch was in service by an agreement and this transporting of Mr. Kennedy and Mr. Dowsett happened under this contract was simply part of it, it being entirely subject to orders and being in waiting for any services that it might be called upon to perform.

That's all, Mr. Gedge.

[Testimony of George J. Fern, for Libelants.]

Direct examination of GEORGE J. FERN, a witness called on behalf of Libellants Inter-Island Steam Navigation Co., Ltd., and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. Mr. Fern, December, 1909, did you have anything to do with the operations on the part of the Inter-Island Co. at the “Celtic Chief”?

A. I do.

Q. What was the part you had in it?

A. Taking charge of the stevedores, discharging freight off the “Celtic Chief.”

Q. Will you tell us how they worked in discharging that fertilizer from the ship into the boats? What appliances were used?

Mr. OLSON.—Just a moment. Is this for the purpose of showing further expenditures or anything having to do with expenditures at all? [2970—2139]

Mr. WARREN.—No.

Mr. OLSON.—Then that’s all right.

A. Well, I was sent out there to be foreman of the stevedores.

Q. What’s that?

A. I was sent out there to be foreman of the stevedores discharging the freight of that ship.

Q. When did you go out?

A. I went out on the Tuesday afternoon.

Q. And what appliances were rigged up and used on the “Celtic Chief” to get the cargo out?

A. Well, the first thing we do, just rig up the fall and the guy.

Q. What kind of a fall was rigged up?

(Testimony of George J. Fern.)

A. Well, simply rope, about half-inch rope.

Q. And how was the cargo brought out of the hole, out of the hatch? A. By hoisting.

Q. What kind of a hoist? A. By the winch.

Q. What winch?

A. Well, the winch of the ship.

Q. How many bags of fertilizer in a sling could be taken out and were taken out by the winch?

A. In the first beginning, the first sling we try it was six bag and the winch can't raise it over and so we empty two bag, take two bag off and that was raised, raised four.

Q. Hoist four? A. Four bag to a sling.

Q. With four bags in a sling how did that winch work?

A. The winch works all right when there's one sling hoisting at a time. If the after hatch hoist the middle hoist raise at the same time, the winch couldn't pull the two sling up with four bag in each sling.

Q. Could not? A. Could not hoist.

Q. Have you had any experience in working of winches and taking out of cargo before that time and after?

A. Well, experience on winch I don't at all.

Q. I mean generally in your business for the Inter-Island Co. have you had experience in using apparatus to take out cargo?

A. Oh, yes, I do. [2971—2140]

Q. How much? A. What you mean?

Q. How long have you worked at that kind of business?

A. I was eight years in Inter-Island place and

(Testimony of George J. Fern.)

Wilder. When there's no mate around the ship I goes there and stand by look to that work.

Q. And before that what did you do?

A. I was sixteen years in the two company.

Q. What?

A. In the two companies I am sixteen years in there. Eight years in Wilder's and eight years in Inter-Island.

Q. Do you know anything about the condition of that winch?

A. Well, I don't know nothing about the winch before, but the condition I could know the winch is very poor to hoist.

Q. Do you know what kind of water was used for the boiler? A. Salt water.

Q. How do you know that?

A. I saw the pipe leading to the water down the side of the ship pumping water into the donkey boiler.

Q. Do you mean over the side and down into the sea? A. Over the side of the ship, yes.

Q. Captain Miller use that winch any time Wednesday afternoon or Wednesday morning?

A. Yes, I saw him taking a turn at the gypsy-head of the winch once awhile.

Q. Once in a while?

A. Yes. When we load our cargo on the other side when there's *body* there while he's got a chance to turn his tackle around the gypsy-head. I couldn't swear how many times, but he did that.

Q. That is, you say when there was nobody there?

A. Yes, that is when there is none of my boat alongside the ship.

(Testimony of George J. Fern.)

Q. Do you know whether he used that Wednesday at all after six or seven o'clock Wednesday night, Wednesday evening? A. No, he did not.

Q. How do you know that?

A. Because I had the winch all of that time up to ten.

Q. How were you using it?

A. Take my fall on the gypsy-head, [2972—2141] they haven't got chance to put their line on that gypsy-head while I was working.

Q. Were you at both gypsy-heads?

A. Yes, there on starboard and the port gypsy-head.

Q. What were you using the starboard gypsy-head for? A. Take in the guy of the middle hatch.

Q. Take in what?

A. Take in the guy, that main guy.

Q. What do you call that?

A. Generally call that guy.

Q. Do you know what a burthen fall is?

A. That is the middle fall goes on to the barrel of the winch, if there is a barrel. When there is no barrel we generally take the guy to a gypsy-head.

Q. Was there any barrel on this winch?

A. On that winch? Yes, there is a barrel.

Q. Any one using that? A. No.

Q. What did you use the burthen fall on the port gypsy-head for? A. To hoist the after hatch.

Q. What?

A. The hoist the cargo out of the after hatch.

Q. I'm talking about the burthen fall?

A. The burthen fall, just hoist it up and keep a

(Testimony of George J. Fern.)

pull on it to that guy and take it a turn on the pin then slack easy and swing over the side of the ship like that. (Indicating.)

Q. You say that burthen fall was made fast to a pin on the side? A. This burthen.

Q. During the operations in the evening where did you make it fast? A. On the port side?

Q. Yes. A. Always there.

Q. Do you know how much those bags of fertilizer weighed? Did you lift any of them?

A. I did lift some of them—pretty heavy; might be all over 175 or over 250; I can't swear.

Q. Each bag? A. Each bag. [2973—2142]

Q. What would you think would be the average weight of one of those bags?

A. There's two kinds of a bag on that ship.

Q. What?

A. There is two kind of bag on that ship. There's shorter bag and longer bag.

Q. Take the long bag; what would be the average weight of the long bag? A. Over 200.

Q. How much over 200?

A. Well, about 215 or 225, more or less. I couldn't swear to that.

Q. Now, the short bags?

A. The short bag is 175.

Q. Have you in your business used winches on board the Inter-Island steamers?

A. What's that?

Q. Have you in your business used winches on board the Inter-Island steamers?

(Testimony of George J. Fern.)

A. I don't understand.

(Question read.)

A. Well, I'm shipping master, assistant, on the Inter-Island Steamship Navigation Co. I haven't got nothing to do with the winch at all only when there is no mate there, either Haglund or Captain Clarke says to me, "Second mate going home, you better go down the after hatch." That's the time I'll be right there and see how the winch going.

Q. Otherwise that's not your business?

A. No, none of my business.

Mr. WARREN.—Cross-examine.

Mr. OLSON.—No questions.

Mr. WEAVER.—We have none. [2974—2143]

[Testimony of J. F. Haglund, for Libelants.]

Direct examination of J. F. HAGLUND, a witness called on behalf of Libellants, Inter-Island Steam Navigation Co., and sworn.

Mr. WARREN.—Q. What is your business, Captain?

A. Master mariner. At present Superintendent of Inter-Island Steamship Company.

Q. How long have you been superintendent?

A. About thirteen years, I think.

Q. What is your age? A. Fifty-seven.

Q. Have you had experience at sea?

A. Yes, I've been to sea since, I guess, fifty-four years ago.

Q. And what capacities have you served in since you began going to sea?

A. Start in as cabin boy, sailing before the mast, mates, captain.

(Testimony of J. F. Haglund.)

Q. When did you get your first master's license?

A. Master for steam, American papers, I got them 1900—eleven years ago.

Q. And of sailing vessels?

A. Well, my first paper I got in 1872.

Q. First master's papers?

A. No, that's my second mate's paper.

Q. What is that? A. Second mate's.

Q. And your first master's paper?

A. I never had no master's paper until 1911, I mean 1900—eleven years ago.

Q. I mean of sailing vessels?

A. Sailing and steam both.

Q. Have you had any experience in towing vessels [2975—2144] and handling them?

A. Yes, I have.

Q. Handling lines? A. Yes.

Q. Tell us generally what that has been.

A. While I've been, since I've been in the Inter-Island service I have been often towing Inter-Island steamers on several occasions.

Q. Have you had any experience in salving of vessels?

A. I have, yes. Quite a good many instances.

Q. Tell us the names of different vessels that you had to do with in salvage operations.

A. I was out at the "Manchuria" the time she was ashore off Waimanalo. I was also aboard of the "Sheridan" when she was ashore off Barber's Point and the ship or the barque "Ernest Reiger," French barque, ashore off Diamond Head; the "Mirowirz," stranded off Honolulu Harbor; the "Chorusu Maru"

(Testimony of J. F. Haglund.)

off Honolulu Harbor, and the British barque "Alexander Black," ashore at Kahului, Island of Maui; schooner "Jennie Walker," down South Sea Islands, twice ashore; I took her off. Steamer "Kaals," and steamer "C. R. Bishop," ashore on this Island and also on Kauai. I towed them off the reef. And the "Celtic Chief," I guess, the last one. And the "Loch Garve," yes, that's so. "Loch Garve," off Molokai.

Q. Generally speaking, what part have you had to do in salvage operations of this kind, these vessels?

A. Well, in a couple of them I was mate of them at the time they went ashore. These Inter-Island boats. And the last four or five I was Superintendent of Inter-Island steamers at the salvage operations.

Q. Who was in charge for the Inter-Island Company? A. I was.

Q. On all of the occasions where the Inter-Island Steam [2976—2145] Navigation Company had to do with the operations?

A. Yes, in all them occasions.

Q. Can you name any one or more of those vessels which were stranded substantially as the "Celtic Chief" was, with conditions as nearly similar as you can give them?

A. The French barque off Diamond Head was ashore just about the same as the "Celtic Chief"; the "Chorusu Maru." That's the only two I can remember about the same as the "Celtic Chief."

Q. What is the business generally of the Inter-Island Steam Navigation Company?

A. General business?

(Testimony of J. F. Haglund.)

Q. What's its business?

A. Operating a line of coasting steamers carrying freight, passengers, and mail between the Islands, different Islands, and Honolulu.

Q. Referring, now, to the stranding of the "Celtic Chief," what time did you first go out there?

A. I went out there about five o'clock on Monday evening, December the sixth, if I remember right, 1909.

Q. And what did you do then?

A. I just went out in a launch with instructions to our steamers to remain there over night. That is the steamer "Mauna Kea" and the "Mikahala."

Q. Where did you go that night?

A. I went back to Honolulu again.

Q. Didn't go on board the "Celtic Chief" that night? A. I did not.

Q. Now, when next did you go out?

A. I went out on Tuesday morning; left the wharf at half-past six in the morning; went out there in the steamer "Helene" and took the "Mauna Kea's" place; sent the "Mauna Kea" in into the harbor as they had to go out that day [2977—2146] for Hilo on her regular schedule run, mail and passengers.

Q. What time of day?

A. That was seven o'clock.

Q. I mean what time was she scheduled to leave?

A. I don't remember exactly whether her schedule had been changed. As near as I can remember her schedule time was twelve o'clock. Since then it's changed to ten o'clock. I'm not altogether positive.

Q. And what had she to do before departing at ten o'clock?

(Testimony of J. F. Haglund.)

A. She was scheduled to sail at that hour with mail and passengers and freight.

Q. The line, you say, she, the "Helene," took her place early that morning?

A. Yes, about seven o'clock.

Q. Now, what had the "Mauna Kea" to do between then and twelve o'clock?

A. They had to go in and take all the freight aboard to start with. She had been out to the "Celtic Chief" the biggest part of Monday. She went out about ten o'clock, I think, if I remember right.

Q. Did you see the "Mauna Kea's" line break at all?

A. I did not. I know it was broken, though.

Q. Try to talk a little louder.

A. I say I didn't see it break, although I know it had been broken.

Q. How do you know that?

A. Because there was a good part of the line lost and after I go aboard the "Celtic Chief" I could then see that the line had been broken, because there was part of it aboard there.

Q. What vessels were out there Tuesday morning after the "Helene" took her place?

A. "Mikahala," the tug "Intrepid." [2978—2147]

Q. And the "Helene"? A. And the "Helene."

Q. What, if anything, was done by these three vessels during Tuesday?

A. Well, after we got the "Helene" moored, I went aboard the "Celtic Chief" to make arrangements to discharge some of her cargo into our steamers.

(Testimony of J. F. Haglund.)

Q. How was the "Helene" moored?

A. The "Helene" was—well, she was placed practically in the same place as the "Mauna Kea" had had on the "Celtic Chief," port quarter about a point, that is, to the westward.

Q. About a point to the port quarter?

A. Yes, two anchors.

Q. And do you know the length of her line, the distance between the "Helene" and the "Celtic Chief"?

A. Yes, I do.

Q. What is it?

A. Well, her distance between, after she was moored, her distance was six hundred and about six hundred and thirty-five feet.

Q. Will you tell us just how you know that?

A. Well, I measured the "Mauna Kea" line. There was six hundred feet left of it. There was one hundred and fifty feet lost. And then she had a bridle about thirty feet long.

Q. Where was that bridle?

A. From the "Helene" stern to the twelve-inch line; three parts of seven-inch line. And by the "Celtic Chief" the twelve-inch come between five and six feet outward of the "Celtic Chief's" stern. That makes it six hundred and thirty-five feet from stern to stern.

Q. When did you measure what was left of the "Mauna Kea's" line?

A. I measured it afterwards.

Q. Do you know how long that line was when it was taken [2979—2148] out?

A. Hundred and twenty-five fathoms.

(Testimony of J. F. Haglund.)

Q. And the size of that line?

A. Twelve-inch manilla.

Q. Now, how many anchors did the "Helene" have out? A. She had two anchors out.

Q. Just how much chain was there to those anchors?

A. Ninety fathoms of chain on the starboard anchor, and sixty fathoms on the port anchor.

Q. Now, in what direction were those anchors laid?

A. They were spread about, I should judge, between two and three points apart.

Q. Each?

A. No, between the two anchors. Probably about three points. I should judge the weight of the anchors about two thousand pounds each. Inch and a half chain.

Q. Do you know these things of your own knowledge? A. Yes, sir.

Q. Now, the "Mikahala." What was her bearing from the "Celtic Chief"?

A. The "Mikahala's" bearing from the "Celtic Chief," is two points on the "Celtic Chief's" starboard quarter.

Q. And what anchors did the "Mikahala" have out?

A. They had one anchor out and about thirty fathoms chain.

Q. And what position?

A. On her port bow; port anchor, port bow.

Q. How many points off the port bow?

A. When she towed in the direction I described, two points on the starboard quarter, her anchor was

(Testimony of J. F. Haglund.)

still about a point on her port bow; that would be her anchor-chain.

Q. What was the object of anchors out with the "Helene"?

Mr. OLSON.—Just a moment. I object on the ground [2980—2149] this is cumulative.

The COURT.—The objection is overruled.

(Question read.)

A. Well, the object of putting the "Helene's" anchors out in the manner they were put out—

Mr. OLSON.—Now, just a moment. I object on the ground that it is calling for a conclusion of the witness.

Mr. WARREN.—I withdraw the question. What object did those anchors serve as so placed?

Mr. OLSON.—I object to the question as calling for a conclusion of the witness.

I add to my objection, there is no qualification shown and no proper foundation laid.

The COURT.—It seems to me that even apart from the opinion feature of it, if there is going to be an opinion, the Captain must show his knowledge of the basic facts. I sustain the objection at this time.

Mr. WARREN.—Given a ship ashore, Captain, as the "Celtic Chief" was, and a steamer, such as the "Helene," intending to pull on the ship ashore both by propeller and by heaving on anchors, what is the best position and distance to place anchors of the pulling steamer for that purpose?

Mr. OLSON.—I object to the question on the ground that it doesn't state sufficient facts upon which material testimony can be given in this case,

(Testimony of J. F. Haglund.)

there being no statement as to depth of water and various other circumstances which would, necessarily, enter into that sort of situation before testimony can be given.

The COURT.—Objection overruled.

A. What is the question?

(Question read.)

A. Well, in this particular case was to get anchors [2981—2150] so nearly astern of the "Celtic Chief" and so far away as possible.

Q. What is the advantage of distance?

A. The greater the distance, of course, the better hold and more purchase you can put on before you drag home.

Q. Now, do you know what use, if any, was made of the "Helene" anchors and chains in these operations?

A. Well, they were hove taut, so taut as it possibly could be got.

Q. How?

A. Without engines steaming ahead and her power of the winches to heave the chains taut.

Q. And how long did the "Helene" do that?

A. Until it was as taut as she could possibly get it on Tuesday morning.

Q. And how long did she continue?

A. She continued towing on the vessel until we got her off on Wednesday night, and if there was any slack on the chain that was always hove in, but there was very little slack on the chain. Maybe a few links during that time. Her head like that and exactly as a mooring to keep that "Celtic Chief" from going farther on the reef.

(Testimony of J. F. Haglund.)

Q. Do you know what the position of those anchor lines, anchor-chains, was after the "Helene" got them taut the first time?

A. Well, between the two anchors, a point on the "Celtic Chief" port quarter.

Q. I mean with respect to the water.

A. Just as taut as they possibly could be made without breaking it.

Q. How do you know that?

A. Well, I could see it.

Q. Did you go on board the "Helene"?

A. Several times; yes. [2982—2151] I went aboard of her, went around her, looked at the chains forward, just as taut as they possibly could be hove and the line was just as taut as it possibly could be between the "Celtic Chief" and her.

Q. When did you go out in a boat? Did you say you went out in a boat?

A. I went out on Monday evening about five o'clock.

Q. I mean after that. Did you make any examination of the lines and anchor-chains of the different vessels?

A. I did several times.

Q. Tell us how you did that.

A. One of the steamer boats from vessel to vessel, both astern of her and ahead of her; looked at everything, chains and hawsers; saw that everything was kept as taut as they possibly could be gotten without breaking.

Q. Do you know how the anchor of the "Mikahala" was used?

A. Yes.

Q. Tell us.

(Testimony of J. F. Haglund.)

A. That was not used for the same purpose as the "Helene." That was up there on Monday; was got out just merely for to hold the steamer in position.

Q. Do you know the depth of the water where the "Helene's" anchors were, approximately?

A. I can't state the depth of the water where the anchors were, no, but the depth of the water where the steamer was lying was somewheres around five fathom.

Q. Now, the "Arcona." Did you see her come out? A. I did.

Q. Tell us what she did first on coming out?

A. She come out on Wednesday somewheres around eleven o'clock in the forenoon, I think it was, and she dropped her port anchor in a line, direct line with the line of [2983—2152] "Celtic Chief" astern.

Q. About how far out from the "Celtic Chief"?

A. Between—it's very hard to judge the distance exactly, but I should judge all of fifteen feet, anyway.

Q. And then what?

A. And then she run a line to the "Celtic Chief."

Q. What kind of a line?

A. Well, there was a manilla line, if I remember right. Either manilla or hemp, one of them, and with that they hove a small wire aboard, made that fast. It was lying at right angle, practically. When she was about to tow she was practically at right angle to the "Celtic Chief" at that time. And in starting to heave herself around both her capstan, winch, or whatever it was, and her propeller, trying to work

(Testimony of J. F. Haglund.)

herself around, she parted the wire and just a few minutes afterwards she had it fast.

Q. Then what happened?

A. *They* they hauled that in around and hove her anchor up and steamed away to the eastward.

Q. Where was the "Arcona" when she hove the anchor up?

A. She was in a line looking from the "Celtic Chief" about in the middle between the "Helene" and the "Mikahala," as near as I could judge, of course, the one being more the eastward. Of course, the vessel itself was closer down upon the "Helene."

Q. How near did she come to the "Helene"?

A. That I couldn't tell. I was aboard the "Celtic Chief."

Q. Approximately?

A. She was rather close to the "Helene" herself in position. That's the reason she hove her anchor up and moved over to windward.

Mr. OLSON.—Move to strike the last part of the answer as calling for a conclusion of the witness.
[2984—2153]

Mr. WARREN.—I ask leave to ask the witness how he knows.

The COURT.—I'll not strike it at this time. I'll allow the question.

Mr. OLSON.—The Court will reserve its ruling on the motion?

The COURT.—Yes.

Mr. WARREN.—How do you know that was the reason?

A. I could see that she couldn't possibly heave

(Testimony of J. F. Haglund.)

clear of the "Helene" and get into position. The winds and current to the westward, it was impossible. She would drag her anchor in further to the westward if she had not hove up her anchor and moved.

Q. What position would she have taken or how would she have moved under the conditions that you observed?

A. Well, she—where she dropped her anchor she would have been lying practically where the "Helene" was lying when the anchor was dragged at the time. She couldn't possibly go to windward of the "Helene" in the position that she wanted to be in.

Q. Then she took up her anchor, and where did she go?

A. She steamed up to eastward ahead of the "Mikahala."

Mr. OLSON.—Now, I ask for a ruling on my motion.

A. I know where she wanted to go to.

The COURT.—I shall have to grant the motion, Mr. Warren.

Q. Tell us as nearly as you can just where the "Arcona" dropped her anchor the second time, Captain, approximately how far ahead of the "Mikahala" and where with respect to the center line of the "Mikahala"?

A. Well, I can tell you in what line she dropped her anchor from the "Celtic Chief," but the distance from the "Mikahala" I couldn't very well state.

(Testimony of J. F. Haglund.)

Q. What was her line then? Imagine a line drawn from the stern of the "Celtic Chief" out to the "Mikahala" and extending beyond the "Mikahala," on which side of that line did she drop her anchor?

A. Right on that line.

Q. How do you know that?

A. The line from the "Celtic Chief" stern just cleared the "Mikahala's" starboard bow. I could see the anchor dropped.

Q. Where were you?

A. Aboard the "Celtic Chief."

Q. What part?

A. Right astern, about the middle of the ship astern.

Q. And what position did the "Arcona" then assume?

A. Well, paid out chain and I don't know how much, but she got then halfway down between the "Helene" and the "Mikahala" looking from the "Celtic Chief" clear on another line and hove on another wire aboard the "Celtic Chief."

Q. In that position where was she with respect to the "Celtic Chief"? What direction?

A. Well, the "Arcona's" stern then was practically right astern of the "Celtic Chief," in line with the "Celtic Chief."

Q. And then what was done?

A. They run a small wire aboard and then after that she tried to get a big wire aboard, but she didn't succeed in getting it aboard. It fouled on the bottom and she couldn't get it aboard.

Q. Tell us what you saw about that?

(Testimony of J. F. Haglund.)

A. Well, she tried to heave it aboard with a surf line without anything to keep the wire from sinking; no buoy, no boat, or anything, consequently she sunk on the bottom and dragged herself down.

Q. How many times did that happen? [2986—2155] A. Twice to my knowledge, anyway.

Q. How much time was consumed in this effort to run the big hawser aboard?

A. Well, I couldn't possibly state the time, but it must have been two or three hours, anyway, attempting to get that big hawser aboard.

Q. What, in your judgment, would have been a proper manner to have brought or conducted that operation to get that cable on board?

Mr. OLSON.—Object to the question on the ground it is immaterial.

The COURT.—The objection is overruled.

A. Well, the "Arcona" had a steam launch running the surf lines and, in my judgment, after they run the surf line if they had put the wire on the steam launch and put it on the "Celtic Chief," it could have been accomplished in less than five minutes.

Recess.

Q. After the "Arcona" gave up the attempt to get on the heavy hawser, Captain, what did she do?

A. She put on another small one.

Q. Tell how it was done, Captain.

A. Well, they run a surf line from the "Arcona" to the "Celtic Chief" and they bent on a small wire and hauled it aboard of the "Celtic Chief" and put that fast on the starboard side of the "Celtic Chief."

(Testimony of J. F. Haglund.)

Q. How many wires? A. One.

Q. What's that?

A. One. They already had one aboard before.

Q. Already had one? A. Yes.

Q. Oh, then this—

A. This was the second wire run aboard. [2987—
2156]

Q. Where was the wire, did the second wire come from? A. From the "Arcona."

Q. What's that? A. From the "Arcona."

Q. I mean which vessel? Was it an "Arcona" wire or "Celtic Chief" wire?

A. The first wire; that is, not the one that parted but the next one run after that, or half of it, was the "Celtic Chief" wire and the other half was the "Arcona's," was bent together about the center, so far as I could judge from the ship.

Q. Do you know the size of those wires?

A. One inch diameter, and three-inch circumference.

Q. About what time was it when the two "Arcona" wires were both connected?

A. Just about somewheres between six and seven o'clock, I think, in the evening. Nearer seven.

Q. What was done with them?

A. Nothing more. Just put on wires, the strain on them alike.

Q. How did they do that?

A. On the ship I suppose.

Q. How's that?

A. They done that on the "Arcona."

Q. How is the strain on two lines equalized?

(Testimony of J. F. Haglund.)

A. They were equalized as near as I could judge; they were both the same tautness, I think.

Q. Well, now, what was their position in respect to the water at six or seven o'clock that evening when they had been put in that position?

A. Oh, a big bight in the water. They struck the water at about a distance, I should think, forty or fifty feet from the different ships.

Q. Any difference between the distance at the "Celtic Chief" end and at the "Arcona" end?

A. Well, not noticeable, as far as I could remember. [2988—2157]

Q. Can you tell us approximately the length of the lines or, rather, the distance between the "Celtic Chief" and the "Arcona"?

A. Well, about as near as I can judge, about probably twenty-five feet further than the distance between the "Helene" and the "Celtic Chief."

Q. That would make it what?

A. Six hundred and thirty-five, and twenty-five; seventy.

Q. You said six hundred and twenty-five for the "Helene"?

A. Six hundred and thirty-five from the "Helene."

Q. That would make about six hundred and sixty for the "Arcona"? A. About that.

Q. What was the distance between the "Mikahala" and the "Celtic Chief"?

A. The "Mikahala" was a good deal nearer to the "Celtic Chief." I should judge approximately her length was one hundred and forty-seven nearer to the "Celtic Chief."

(Testimony of J. F. Haglund.)

Mr. OLSON.—How much?

A. About one hundred and forty-seven feet. The “Mikahala,” as near as I could observe, was about in line with the “Arcona’s” stern.

Q. How do you figure out the distance?

A. Going around the boat there I could tell the relation of one to the other. I know the “Helene’s” length because I measured that with a tape-line.

Q. Did you see the “Intrepid”? A. Yes.

Q. Just where was she lying when you went out there Tuesday morning?

A. Practically astern, right astern of the “Celtic Chief.”

Q. About what length of line?

A. Oh, a little shorter than the “Mikahala’s.”

Q. How much?

A. Nearly twenty or thirty feet shorter I should judge.

Q. Do you know what was done by the “Intrepid” on Tuesday? [2989—2158]

A. On Tuesday she was towing the whole day.

Q. What is that?

A. She was towing the whole Tuesday.

Q. And how on Wednesday?

A. On Wednesday she towed until late in the forenoon when she was cut adrift to let the “Arcona” in there. She desired that place and claimed there wasn’t room for her unless the “Intrepid” was taken away from there.

Q. How about during Tuesday night?

A. Tuesday night?

Q. Yes, from Tuesday night until Wednesday

(Testimony of J. F. Haglund.)

morning. A. She was there.

Q. The "Intrepid"? A. Yes.

Q. The same? A. Just the same.

Q. Did you observe the line of the "Intrepid" during that day; Tuesday, and up to the noon of Wednesday? A. Yes, sir.

Q. Tell us about that.

A. It was pretty taut. About as taut as I suppose you could get it with her power.

Q. Do you know the size of the line she had?

A. Well, I should judge it was about a ten-inch manilla hawser with a piece of wire spliced on to the end that led on board of the "Celtic Chief"

Q. I'd like to show you Libellants' Exhibit "L," being a photograph, and ask you if you can identify any of the lines there shown attached to the "Celtic Chief."

A. I can identify all of them. This is the "Helene's," the big line, the top one at the ship is the "Helene's."

Q. The heavier one? A. On the port stern.

Q. Now, the one just under that?

A. Underneath, that's the "Likelike" from the port [2990—2159] quarter pipe, right opposite the mizzenmast.

Q. Under the third line?

A. This is one of the "Arcona's" surf lines and this is the Miller Salvage Company's manilla hawser.

Mr. OLSON.—Underneath that? A. Yes.

Q. That's the fourth line from the top. Looking, now, at Libellants' Exhibit "I," can you identify the lines there shown, Captain?

(Testimony of J. F. Haglund.)

A. Yes. This is the "Helene's."

Q. The top one?

A. The top one is the "Helene's."

Q. The next?

A. This is the "Intrepid's" and this is the "Mikahala's."

Mr. WARREN.—Passing near the boat.

The WITNESS.—That's the "Helene's" boat by the "Mikahala" line.

Q. Libellants' Exhibit "K." What lines are there shown, Captain?

A. The top one is the "Helene's," the next one is the "Intrepid's."

Q. "Mikahala" coming from the center?

A. "Mikahala's" line from the starboard quarter chock.

Q. I now show you Libellants' Exhibit "J," that being the "Mauna Kea." Now, I'll ask you if you know approximately the length of the line shown on this picture from the stern of the "Mauna Kea" to the edge of the picture at the right, approximately how many feet of line in view?

A. Approximately in the neighborhood of four hundred feet, I should judge, by that picture. The "Helene," over two hundred feet long.

Q. How much over two hundred feet? [2991—2160]

A. Thirty-nine and a fraction.

Q. Now, looking again at Libellants' Exhibit "L," I'll ask you how much line, approximately, is there shown of the "Mauna Kea"—I mean the "Helene."

Mr. OLSON.—I object, if the Court please, on the

(Testimony of J. F. Haglund.)

ground that the witness has no basis to proceed.

Q. Can you, in looking at that picture, Captain, estimate the distance of the line there shown?

A. Well, not correctly. I can form a pretty good judgment of it.

Q. What is it?

A. By this picture, oh, I should judge about two hundred to two hundred and fifty feet.

Q. And the "Likelike" line?

A. The "Likelike" line shows a little bit longer.

Q. How many lines did the "Mikahala" have?

A. She had two eight-inch manilla hawsers. That is, on Wednesday.

Q. What time was that line put on on Wednesday; the second one.

A. The second line was run out, as near as I can remember, about seven or shortly after seven o'clock in the morning, if I remember right.

Q. Now, what approximately was the distance between the "Helene" and the "Mikahala" in their distance that you have testified to?

A. Oh, about five hundred feet, I should judge.

Q. Now, when did the "Likelike" come out?

A. She came out on Wednesday, about half-past 11 A. M.

Q. And what position did she take?

A. A little to the westward of the other steamer "Helene" on the "Celtic Chief's" port quarter.

Q. About how far from the "Helene"? [2992—2161]

A. Well, after she was in towing position, I should

(Testimony of J. F. Haglund.)

judge about a hundred feet or little more, perhaps.

Q. And what was the distance between the "Like-like" and the "Celtic Chief"?

A. Well, it's a little closer than the "Helene." About, I should judge, about six hundred and seventy-five and eighty, about.

Q. You say closer than the "Helene"? A. Yes.

Q. And you gave us six hundred and thirty-five for the "Helene." I'm asking for the distance between the "Celtic Chief" and the "Helene."

A. I said five hundred and seventy-five and five hundred and eighty.

Q. Do you know the depth of water around the "Celtic Chief"?

A. Well, I saw it sounded there. I didn't sound myself, I saw Captain—

Q. Did you see the soundings?

A. I saw the soundings, but I didn't sound myself, I say.

Mr. OLSON.—Then, I submit, if the Court please, the witness can't testify.

Mr. WARREN.—What did you see in the way of soundings?

A. Nineteen feet.

Mr. OLSON.—I submit that the witness' answer must be stricken on the ground it is not responsive.

A. I saw the mark on the lead line.

Q. What did you see, Captain?

A. I saw the lead thrown aft and the line was marked off and I can see from the "Celtic Chief" just the same as the man what heaved the lead what depth we were, although I didn't have the lead in my

(Testimony of J. F. Haglund.)

hand, but I saw the depth by the mark on the lead.

Q. And that was what?

A. Nineteen feet. [2993—2162]

Q. That was aft. What about forward?

A. I didn't see it sounded forward, sir.

Q. Do you know what kind of a bottom it was there?

A. I couldn't positively say out there. There was more or less coral because I saw the water discolored. There was a milky color and judging from that there must have been more or less coral.

Q. What is there about coral that makes the water white?

A. The motion of the ship grinding it up discolours the water.

Q. Referring again to the "Arcona" lines, as you saw them made fast between six and seven o'clock on Wednesday night and the position in which you have described, do you know whether or not there was any change in the position of those lines after that night?

A. No, not up to the time that the ship was floated off there was no visible change to me.

Q. How often did you observe them?

A. Well, shortly before eleven o'clock I was in the boat and around the "Arcona"; saw her chain and saw her lines, and after I got aboard the ship, somewhere around eleven o'clock, then the search-light was on which made everything pretty plain, you could see from the "Celtic Chief" whether there was any change or not. I couldn't see none.

Q. How near did you come to the "Arcona's"

(Testimony of J. F. Haglund.)

anchor-chain when you went out that night in the boat?

A. I was right up against the "Arcona's" stern with the boat and possibly within two or three feet of her anchor chain. It was hanging perpendicular altogether at that time. [2994—2163]

Q. On which side?

A. On the port side.

Q. Did you test it in any way, touch it?

A. No, I didn't put my foot on it; put my hand on the stem.

Q. And how near did you come in the boat to the stern lines of the "Celtic Chief"?

A. Oh, probably within from twenty to thirty feet away from the stern where I passed by there in the boat.

Q. If the lines of the "Arcona," or either of them, had been made taut that night, would you have known it? A. Yes, certainly would.

Q. Do you know whether or not the "Arcona" heaved on her anchor chain any time that night?

A. She did not.

Q. How do you know that?

A. Well, part of the evening I was aboard of her.

Q. You were aboard of her? What part of the evening?

A. Well, I got aboard there little before ten o'clock and I left her shortly after.

Q. Well, as to other times, if she had heaved on her anchor chain at any time that night, would you have known it?

A. Yes, I would. It would have altered her position.

(Testimony of J. F. Haglund.)

Q. How altered her position?

A. Well, her anchor being way off to windward, in fact, to the east of the "Mikahala," if anything, the whole part of the chain, it certainly would have brought the "Arcona" closer up against the "Mikahala."

Q. Do you know whether or not the "Arcona" changed her position at any time after six o'clock that night and before the ship came off?

A. She did not.

Q. Could she have changed her position without your knowing it?

A. No, she could not have changed her position without my knowing it because I [2995—2164] was there all the time.

Q. Do you know whether or not the "Arcona" used her propeller any time that night?

A. She did not use her propeller.

Q. Could she have used it without your knowing it?

A. If she had used her propellers she would have tightened up the wires, which she didn't do.

Q. Were you able to see those wires after dark Wednesday night?

A. Six, seven or eight o'clock, whenever it became dark and before the search-light came on? Well, from the "Celtic Chief," you mean?

Q. From anywhere that you were.

A. I could see them because I was out in the boat and close by them. I could see them from the "Arcona" when I was aboard of her, and I could see the "Celtic Chief" end when I was aboard the "Celtic Chief."

(Testimony of J. F. Haglund.)

Q. How long were you out in the boat among the vessels that night?

A. Well, so near as I can remember, I must have been absent from the "Celtic Chief" about two hours, approximately. I couldn't state exactly. Maybe two hours and a half.

Q. What time did you get back to the "Celtic Chief"?

A. About eleven o'clock, so near as I can remember. I don't know exactly to the minute. Approximately eleven o'clock.

Q. What time did the search-light come on?

A. Just about that time.

Q. Before or after you were actually on board the "Celtic Chief"?

A. Thrown on a little before I got on board of her. I was about halfway between the "Arcona" and the "Celtic Chief," before it was thrown on.

Q. What was the occasion of your going on board the [2996—2165] "Arcona"?

A. Well, we had made arrangements, that is, Captain McCauley, Captain Henry, and myself, that when the "Celtic Chief" was floated that the steamer "Mikahala" was to take care of her, and on Wednesday evening Captain McCauley informed me that the executive officer of the "Arcona" had been on board the "Celtic Chief." Whether he heard of our arrangement or not, of course, I don't know and it was changed unbeknown to me that the "Arcona" was to take care of the ship instead of the "Mikahala" and that's what brought me on board the "Arcona" to *confirm* with the executive officer.

(Testimony of J. F. Haglund.)

Q. Whom did you see?

A. The executive officer.

Q. Where did you go?

A. I went all over the quarter-deck then I went down the executive officer's room, amidships on her port's side.

Q. What were the arrangements as to signals prior to that time?

A. Prior to that time, we haven't had any signals after the two red lamps what we use to put up in the mizzen rigging of the "Celtic Chief."

Q. And what arrangements as to what vessel was to take care of the ship in the event of her coming off?

Mr. OLSEN.—I object to the question on the ground it was asked and answered.

Mr. WARREN.—Prior to that time.

A. The "Mikahala"—

Mr. OLSEN.—Just a second.

Mr. WARREN.—Where were you when the programme was changed?

A. I don't know. I may have been on the "Celtic Chief," [2997—2166] but I didn't know about it until Captain Macaulay told me of it late in the evening.

Q. Then what arrangement was then made as to what vessel should take off this ship?

A. The "Arcona" was to take care of the ship after she was afloat.

Q. How do you know that?

A. Well, the executive officer told me that after he come on board.

(Testimony of J. F. Haglund.)

Q. Tell us the conversation between yourself and the executive officer.

A. He expressed a very strong desire for to delay operations until one to daylight. "We could see what we were doing," he said. I told him we couldn't do that. We had to try to take the ship off at the first opportunity that was at high water which will be after midnight that night, so he said he was in no position to tow because he knew that he would break his small wires that he had out, and furthermore, that he didn't like to cut them.

Mr. OLSEN.—What?

A. He didn't like to cut them and he was afraid if he start the engine and break them, as he was pretty sure he would, that he would get them tangled in his twin-screws, so that arrangement for the signals to be given as I got here.

Q. What is that paper that you have?

A. This is the paper that the executive officer of the cruiser "Arcona" wrote that evening about the signals to avoid any confusion or anything of that sort that may occur.

Q. Did you see him write this? [2998—2167]

A. Yes, sir, I was alongside of him in his room.

Q. Who arranged those signals?

A. Well, he did after a lot of alteration. He made a big list, took us a couple of nights to get through with so it was reduced to this. One green star to be shot out of the pistol signified the ship was moving.

Mr. OLSEN.—I think the memorandum will speak for itself, if the Court please.

(Testimony of J. F. Haglund.)

Q. Did you remember the signals, Captain, independently of the paper? A. I certainly do.

Q. Will you tell us what they were independently of this paper? A. One green star was to—

Mr. OLSEN.—Now, if the Court please, the memorandum is the best evidence and I object to the testimony on that grounds.

The WITNESS.—Captain Nelson and Captain Tullock got a copy of them same signals now, so far as I know.

Mr. OLSEN.—Move to strike the last answer on the ground it was not responsive and it is immaterial.

The COURT.—Motion granted.

The WITNESS.—Them red signals was not fired, wasn't to be fired.

Mr. OLSEN.—I move to strike on the ground it is not responsive.

Mr. WARREN.—I asked the motion be granted, your Honor.

The COURT.—Motion will be granted.

Q. Now, Captain, will you go on and tell us what you know of your own knowledge about the green light signals that were arranged between you and the executive officer that night? [2999—2168]

A. A green star was to signify that the "Celtic Chief" was starting to move, and two green stars was to be fired when we thought that she was to be afloat, and the red signals there wasn't to take any note, signified the same as the red lamp that we had in the mizzen rigging, when to go slow and to go full speed on the engine. And then there was some

(Testimony of J. F. Haglund.)

private signals for the "Arcona" only. There were supposed to be white stars.

Q. Apart from the green signals, Captain, do you know of any other signals that were arranged that night between you and the executive officer?

A. Them red ones, you referring to, Mr. Warren?

Q. Handing you now this paper that you have produced, I'll ask you what these red signals are.

Mr. OLSEN.—He's already testified what the signals are. I object to the testimony unless it appears that the document itself is put in evidence.

Mr. WARREN.—I'll put the document in evidence; don't worry about that.

Mr. OLSEN.—Then I'll object to any testimony before it is in evidence.

I'll add to the objection that the document will speak for itself and is the best evidence.

Mr. WARREN.—I offer this document in evidence.

(Libellants' Exhibit "N," Testimony of Captain Haglund.)

Mr. WARREN.—Referring, first, to your testimony of a moment ago that there were red signals arranged, I hand you now this paper you have produced and which has just been received in evidence and ask what the red signals would indicate.

A. One red signal was to go slowly; that's the towing [3000—2169] steamer.

Q. Those are the same signals that you have testified to? A. Yes.

Q. Same red ones? A. Same red ones.

Q. Now, on this document it reads, "White stars

(Testimony of J. F. Haglund.)

are only for the use of H. T. M. 'Arcona'." Do you know what the white signals meant? What they were, and what they meant?

A. Yes, I know what they meant but not at the time they were written. I didn't know it.

Q. Not at the time they were written? A. No.

Q. When did you come to know it and how?

A. After the "Celtic Chief" was floated off the reef, the "Likelike's" line was cut first and the "Helene" as quickly after as possible, approximately the same time, you may call it, and the "Mikahala" line was not cut. She was to sheer her over to the westward of the "Arcona" and in approaching the "Arcona" pretty closely I went up to the executive officer who was standing by the skylight, and told him, "Ain't you going to start your engines, anything happen to 'Mikahala' hawsers, there might something happen?" He, said "I just give the signals to start in." He fired three white stars. That's how I found out what them white stars were for.

Q. Do you know, whether or not, the green signals were given?

A. Yes, they were given, but they was pretty well mixed up.

Q. Who gave the signals?

A. One of "Arcona's" men, one of the sailors, I presume it [3001—2170] was.

Q. Where?

A. On board of the "Celtic Chief" on top of the after-house, pilot-house.

Q. Do you know under whose direction that man was?

(Testimony of J. F. Haglund.)

A. The executive officer's. He was standing by the skylight there and giving him orders when to fire the signals.

Q. Did you have anything to do with the giving of the signals yourself? A. I did not.

Q. When did the "Celtic Chief" first begin moving seaward?

A. Somewheres around a quarter of twelve o'clock Wednesday night.

Q. Where were you?

A. Aboard the "Celtic Chief."

Q. Had she moved, if she had moved prior to that time, would you have known it?

A. Yes, I would have known it.

Q. Did you have any bearing?

A. I had bearing on shore lights being there, two lights. I could tell somewhat the lights that I had.

Q. Did you take any bearing Wednesday night after eleven o'clock after you got back?

A. That's one of the first things I did to look at some of the light ranges.

Q. At that time, did you notice any change in position? A. No, no change at all.

Q. And when she first moved about quarter of twelve, how did she move?

A. She started to move very, very slow; could feel her grinding on the bottom and vibrating very [3002—2171] heavily as the big swells come in and lift her, you see, and felt her, more buoyancy on the ship; and also before the lightering.

Q. Between say quarter of twelve and twelve, about how far did she move?

(Testimony of J. F. Haglund.)

A. I couldn't very well tell the distance, but she moved very, very little bit, just a little, few feet, I think.

Q. About what time was it that she came actually free off the reef?

A. By my watch, it was twenty minutes past twelve o'clock; that's Thursday morning.

Q. Now, in what direction did she then move on coming free from the reef?

A. Well, until the "Helene" and the "Likelike's" line was cut, of course, she went right dead astern, but after them two steamers were cut away, of course, "Mikahala" sheered her over further to eastward towards Diamond Head side.

Q. Were the lines of the "Helene" and "Likelike" cut before or after she was actually free off the reef?

A. There was none of them before she was free off the reef, that is so far as I know.

Q. How long after she was free?

A. I never felt her bumping after that.

Q. About how long after she was free of the reef, did you cut the lines of the "Helene" and "Likelike"? A. Immediately.

Q. What?

A. Immediately after she was floated. I had men stationed there with axes, you see, before she was afloat ready to cut as soon as I give orders when the ship was free. [3003—2172]

Q. And how much time after that before the "Mikahala" line was cut?

A. It's very hard to judge the time, but I should judge maybe five minutes. Of course, I couldn't to

(Testimony of J. F. Haglund.)

a minute, but I should judge in the neighborhood of five minutes.

Q. What was the nearest distance that the "Celtic Chief" approached the "Arcona" in coming off?

A. Well, distances are kind of hard to judge at sea at night-time especially; to my best judgment, maybe thirty or forty feet, maybe little less. I could hardly tell within a few feet, but she was pretty close to her.

Q. Now, when she was that distance from the "Celtic Chief," approximately what were their relative positions, the way they were heading with respect to each other?

A. The "Celtic Chief" was on "Arcona's" port quarter and the direction of it then, I should judge, was about parallel with the "Arcona," the way she was lying.

Q. What were, what direction did the "Mikahala" just after the ship came off, and before her line was cut?

A. The "Mikahala," she pulled to the port with a wheel hard astarboard as soon as she saw her pulled off, and by the time that the "Celtic Chief" was close up to the "Arcona." The "Mikahala" was forward of the "Celtic Chief" beam a point, I should judge, and to sheer her and also to stop her headway, sternway, as much as possible, that was her object in going over that way. That was agreed upon between myself and the executive officer, because he was kind of timid about his twin-screws and his two wires so I agreed with him that the "Mikahala" will be the boat that won't be cut [3004—2173] away until the

(Testimony of J. F. Haglund.)

"Arcona" was safely clear which was carried out.

Q. When did the "Arcona" first get under way or do anything that night?

A. Well, at the time that the "Celtic Chief" approached her, you see, we closed as I have been stating, then she started her engines and went ahead.

Q. Do you whether she hove on her anchor chains at all before that? A. No, apparently not.

Mr. OLSEN.—What is that?

A. Apparently not; I didn't hear her moving until she was clear off and then the "Mikahala" was cut away, and she towed the ship to sea.

Q. Where were you while the ship was going through the water stern first, after leaving the reef?

A. I was on the poop, on the quarterdeck, on the poop.

Q. Did you hear any conversation at that time between the officers of the "Arcona" and Captain Henry, or Captain Pilot Macaulay?

A. Well, I didn't hear it very good; I was on the "Celtic Chief" port side, and Captain Macaulay and Henry and the executive officer were at that time over on her starboard side, so I couldn't very well hear what they talked about, until later he come and told me.

Q. Otherwise, you don't know?

A. I don't know.

Q. Did you see the lines of the "Arcona" from the time the "Celtic Chief" was coming off the reef after she began, say quarter of twelve?

A. No, not until she commenced towing on her.

Q. Why not?

(Testimony of J. F. Haglund.)

A. They were down the bottom, I guess. [3005—2174]

Mr. OLSEN.—Move to strike on the ground it is a guess of the witness by his own statement, therefore not evidence.

The COURT.—Motion granted.

Mr. WARREN.—That is, just the words, “on the bottom, I guess.”

Mr. OLSEN.—Yes, that’s all I want.

Q. You were standing, you say, on the poop deck?

A. I was on the poop deck, on the port side of the poop deck.

Q. If the “Arcona” line had been out of the water, would you have seen them?

Mr. OLSEN.—I object to it on the ground it is leading.

The COURT.—I’ll sustain the objection.

Q. Do you know whether or not, Captain, the lines of the “Arcona” were in or out of the water?

A. I know they were in the water.

Q. What’s that?

A. I know they were in the water.

Q. How do you know it? How do you know they were in the water?

A. Well, the “Celtic Chief” approached the “Arcona” within thirty or forty feet, whatever the distance may have been; she had been over six hundred feet away.

Q. I’m referring particularly to the time while the ship was coming off the reef, say between a quarter of twelve and twenty minutes past twelve.

A. They were slack, the same as they were; both

(Testimony of J. F. Haglund.)

slack in the water, probably about fifty feet from either end where they were fast.

Q. See both of them?

A. I saw both of them. The search-light was on them [3006—2175] and lights of the "Arcona," all kinds of light on her and you could see the two ends perfectly well.

Q. Now, after the "Mikahala's" line was cut, the "Arcona" started up. Describe what happened then.

A. Well, after she commenced towing—

Q. She, meaning the "Arcona"?

A. The "Arcona" started to tow tightening her wire up, her port wire; the wire was fast to the port side of the "Celtic Chief." I don't know what became of the other, she must have parted it. I don't know, but the starboard wire was spliced in by the quarter chock where the "Mikahala's" line was fast to that bit.

Q. What parted?

A. That splicing line were parted and for a minute we thought the whole mizzen-top was coming down; it swung out and then the towline ahead waved midships were cantered. The "Celtic Chief" approached to the "Arcona," then we hailed the "Arcona" to let go the wires; he won't tow any more on that one wire.

Q. How far did the "Arcona" tow the "Celtic Chief" that way?

A. After the splicing line parted, she didn't tow very far, just a matter of a few feet.

Q. And how far out to sea did they go?

(Testimony of J. F. Haglund.)

A. She may have towed her out altogether, perhaps in the neighborhood of a mile, I should judge. Of course, it was very hard to tell correctly, but I should judge that distance.

Q. And then what was done?

A. Then the "Arcona's" lines were let go and the "Likelike" put a hawser aboard of the "Celtic Chief" again, and towed her up to the anchorage off the harbor. [3007—2176]

Q. Well, now, about how far from the anchorage off the harbor was the spot to which the "Celtic Chief" had been towed and left by the "Arcona"?

A. From the harbor to where she was left?

Q. Yes, how far to the anchorage?

A. Oh, may be a little over a mile, I couldn't tell you that very correctly.

Q. Do you know what the depth of the water was?

A. Because I didn't look at the compass to tell what direction the "Arcona" was towing the "Celtic Chief," whether we were going south or southeast, but I think in the neighborhood of south. That would give the distance probably more than a mile. It is very hard for me to tell correctly.

Q. And about how deep was the water out there where the "Arcona" left the "Celtic Chief"?

A. That I couldn't tell you.

Q. Well, you have an idea, haven't you?

A. Yes, I have an idea.

Q. Would it have been possibly to have anchored the "Celtic Chief" out there?

A. Well, oh, it may have been possible to get an anchor there, still I should judge there was a pretty

(Testimony of J. F. Haglund.)

good depth of water there, how much, of course, I couldn't state.

Q. How did it come that the "Likelike" undertook the towing of the "Celtic Chief" back to the anchorage?

A. Well, before the "Arcona" was let go, Captain Macaulay came to me and asked me to—

Mr. OLSEN.—Just a moment. I object to any conversation between Captain Macaulay and Captain Haglund on the ground it is hearsay. [3008—2177]

Q. Do you know where Captain Henry was?

A. He was talking with the executive officer of the "Arcona,"—he was still aboard,—about whether to let go that wire or not.

The COURT.—I am inclined to sustain the motion. I so rule.

Q. Did you have any understanding with Captain Henry as to the "Likelike" taking hold?

Mr. OLSON.—Object to the question on the ground it is calling for a conclusion of the witness.

The COURT.—Objection overruled.

A. I did.

Q. What was said between you and Captain Henry in that regard?

A. He asked me if I would give him a steamer, as they had to let go; the "Arcona" demanded her wire let go from the "Celtic Chief." I told him, yes, after the "Arcona" wire was gone I'd give him a steamer. The "Likelike" happened to be close by the "Celtic Chief" at the time, on the port side, and I hailed the "Likelike" and told the captain to get a wire and fix his towline again. It was done, and we towed her off the harbor.

(Testimony of J. F. Haglund.)

Q. Do you know what vessel furnished the first wire line that was run between the "Arcona" and the "Celtic Chief"? A. The "Arcona."

Q. Do you know whether or not advice was given at any time by the captain or executive officer of the "Arcona" to Captain Henry respecting the salvage operation?

A. Well, the captain of the "Arcona" and his executive officer came aboard the "Celtic Chief" together on Tuesday.

Q. You were there?

A. I was there. And he offered a suggestion then that to put the towline [3009—2178] on forward and try to slue the ship around, try to get her off that way. That was one of the suggestions I heard him make.

Q. Had that been done, captain, would that, in your judgment, have been a proper manoeuver or seamanlike operation under all the circumstances?

A. It certainly would not have been.

Q. Why not?

A. That would be about as dangerous an operation as you could have gotten into to slue her broadside on the reef. We were trying to avoid that all the time, towing her stern to keep her from going broadside.

Q. Any other suggestions that you know of that were offered by the officers of the "Arcona"?

A. None that I can remember.

Q. Do you know what time the second red lantern was sent up into the rigging of the "Celtic Chief"?

A. Well, so near as I can remember, it was somewhere around eleven o'clock. I couldn't possibly state to the minute.

(Testimony of J. F. Haglund.)

Q. How often, during the evening, and until the ship came off, did you observe the lines of the "Like-like," "Helene," and "Mikahala"?

A. Well, practically all the time, evening. When I was in the boat I observed the lines; when I was on our steamers I observed the lines; when I was on the "Celtic Chief." Practically all the time.

Q. Do you know whether or not the white lights that were special signals for the "Arcona" were sent up? A. What was that?

Q. The white lights that were the special signals for the "Arcona."

Mr. OLSON.—Object to it on the ground it has already [3010—2179] been answered by the witness.

The COURT.—I think that was all covered.

Mr. WARREN.—I won't press the question.

Q. Now, Captain, do you know where the Miller anchor was laid? A. I do.

Q. What's the first thing you knew about that anchor out there?

A. Well, the first thing I knew about it was on Tuesday evening.

Q. Tell us about it.

A. The steamer "Mokolii" towed the "James Makee" out, anchored her to the westward of the "Celtic Chief," and then the "Mokolii" come very close by the "Celtic Chief" and hove a heaving line aboard which was not made fast.

Mr. OLSON.—What?

A. It wasn't made fast, I say, and finally fell overboard again. That's all that was done to the—

(Testimony of J. F. Haglund.)

Q. I'm asking about the anchor.

A. Well, the anchor must have been on board the "James Makee," anyhow, supposed to have been on board the "James Makee." Of course, I didn't know that at that time.

Q. You didn't see the anchor that night?

A. I did not, it was after dark.

Q. About what time was it?

A. Well, I should judge about the time I couldn't very well state correct, but I should judge after seven o'clock, because it was dark.

Q. Well, on Wednesday morning?

A. On Wednesday morning Captain Miller came on board and wanted to bring on a line from that anchor which had been dropped on the port quarter of the "Celtic Chief," but Captain Macaulay or Captain Henry, he won't listen to getting a line from that anchor in the direction [3011—2180] that that anchor was placed. Captain Henry would not listen to getting a line from the anchor the way it was there. That's the man he was speaking to. I overheard the conversation.

Q. Tell us just where the anchor was placed.

A. So near as I can judge, must have been in the neighborhood of about four points on her quarter.

Q. And about how far out?

A. A distance, I should judge, about four or five hundred feet, so near as I can judge.

Q. Do you know what the depth of the water was there? A. I did not.

Q. Any idea?

A. Yes, I got an idea that it must have been, ac-

(Testimony of J. F. Haglund.)

cording to the water around there, must have been less than four fathom.

Q. Now, go on and tell us about operations about the anchor.

A. Well, as Captain Henry told Captain Miller at the time, he won't take a line from the anchor lying in that direction, Captain Miller asked him if he placed it somewhere else he would take a line. He said, "Yes, if you'll put it out astern, I'll take a line from you," which was done. Captain Miller went aboard the "Makee" and the "Mokolii" took the "Makee" around the "Helene's" bow and put her in ahead of the "Intrepid" and then they run a line on board of the "Celtic Chief" and they hauled her in there and the anchor was dropped about as near astern as it possibly could be laid.

Q. How do you mean near?

A. Right astern. Directly astern.

Q. And about how far out?

A. Well, that anchor was laid about, as near as I can remember, about six, nearly seven hundred feet from the "Celtic Chief"; little less [3012—2181] than seven hundred feet because after the "Arcona" got in position later during the day, Captain Miller's anchor bow was on her starboard quarter probably twenty or thirty feet ahead of her stern.

Q. After you came back on board the "Celtic Chief" Wednesday night, did you observe the Miller anchor line over the stern? A. Yes, I did.

Q. What was its condition with respect to the water; that is, the wire you saw there?

A. The wire was up out of the water then. Pre-

(Testimony of J. F. Haglund.)

vious to that when we left the ship in the evening, the manilla hawser was still in the water, but coming back to the "Celtic Chief" at eleven o'clock the wire was up.

Q. How far up?

A. Well, that I couldn't tell you, how far inboard it was.

Q. Well, about how far from the stern of the "Celtic Chief"?

A. Lying right aboard of the ship.

Q. You say the wire had come up out of the water after eleven o'clock?

A. Come out of the water, yes.

Q. Now, how near was the end of the wire from the ship about eleven o'clock?

A. Well, I don't,—maybe seventy-five or a hundred feet maybe. Very hard to judge the distance exactly you see, but I don't think it was more than a hundred feet from the ship where it struck the water.

Q. Well, what was the position of the Miller line at that time?

A. Well, it wasn't so taut as it might have been at that time, eleven o'clock.

Q. What do you mean by that?

A. Well, it seemed to be a kind of sagging; it wasn't straight; not so much as it should have been had there been heavy strain on it. [3013—2182]

Q. How much of the line altogether out of the water at the stern, taking the manilla hawser and the wire, how much altogether of the Miller line at the stern?

(Testimony of J. F. Haglund.)

A. The manilla line was in board, I guess, because I didn't see it.

Mr. WARREN.—Withdraw that. About how many feet was it from the stern of the "Celtic Chief" where the Miller line went over and the point in the water where his line entered the water?

A. Well, I stated that, so near as I could judge, it was about a hundred feet.

Q. Well, if that was about a hundred feet, how much of that hundred feet was wire and how much manilla hawser?

A. I didn't notice the manilla hawser at all. It may have been close by the chock, but I won't swear to that, but from the water's edge way up there was wire only.

Q. Do you know the depth of the water where the Miller anchor was laid?

A. Yes, there's approximately five fathom of water.

Q. And do you know how high the stern of the "Celtic Chief" was out of the water?

A. Well, I never measured it exactly, but I should judge in the neighborhood of twenty feet; twenty feet, maybe little more.

Q. Where, in your judgment, would the Miller line have appeared out of the water if it had been taut?

Mr. OLSON.—Just a moment. I object to the question on the ground it is calling for a conclusion of the witness on a point it is unnecessary to have any opinion.

(Testimony of J. F. Haglund.)

Mr. WARREN.—Do you know the size of the Miller wire?

A. Well, I've seen it on several occasions. My judgment would be, to my best memory, about a six-inch line, I think. That is, circumference, as near as I can remember. [3014—2183]

Mr. OLSON.—That doesn't help us any for the simple reason that it doesn't determine its weight.

Mr. WARREN.—The manilla hawser, about how big was that?

A. Oh, the manilla hawser, well, it may be a ten-inch line.

Q. Now, this question being directed to the time you say you didn't see the hawser but you saw the wire up probably near the chock, assuming that Miller's line consisted of a wire of the size that you have testified to, and, in view of your knowledge of the depth of water where the anchor was laid, the height of the stern of the "Celtic Chief" out of the water, how much sag would you say there would be in that wire when taut?

Mr. OLSON.—Object to the question on the ground it doesn't appear that the witness is qualified to answer.

Mr. OLSON.—Captain Haglund, do you know the weight of a wire line six inches in circumference and the length of the one that Captain Miller had in use there?

A. No, I don't know the length of the wire other than I heard testified in court here.

Q. Do you know of your own knowledge?

A. I do not.

(Testimony of J. F. Haglund.)

Q. Do you know its weight?

A. How can I? I don't know the length or anything else. I was just guessing at the size of it.

Q. Now then, do you know, have you ever tested a line, a wire line attached to an object, to an anchor at one end and a solid object at the other, to see where or how much of the line would be in the water and how much out. Have you tested that and made measurements?

A. No, I don't know as I have with a wire line. I've seen it with ropes often enough.

Q. You know that a manilla rope will float to a certain [3015—2184] extent?

A. That all depends on whether the rope is old or new. An old rope will sink before a new.

Q. A new one won't sink as soon as an old one?

A. Certainly not.

Q. You don't know how straight you could get a rope of that size without breaking it?

A. Not—about a breaking strain, you mean?

Q. Yes.

A. I know there would be certainly considerable sag in a wire of that size.

Q. But you have tested it?

A. I never tested it, no.

Mr. OLSON.—I submit that the witness is not qualified to answer.

The COURT.—Captain Haglund, upon what experience would you base any opinion as an expert that you might give here?

A. In this case there's the "Helene's" line.

Mr. OLSON.—What is that?

(Testimony of J. F. Haglund.)

A. In this particular case there's the "Helene's" line.

Q. The "Helene's" line is a manilla hawser?

A. That didn't make no difference when it's out of the water as far as bight. There is a certain comparison between a manilla hawser and a wire.

The COURT.—Unless you can qualify the witness further, Mr. Warren, I'll have to sustain the objection.

The objection is sustained.

Monday, October 30, 1911.

Mr. WARREN.—I don't remember, Captain, whether or not I asked you what time the "Arcona" broke her first wire? Can you tell us?

A. So near as I can remember, it was about noon on [3016—2185] Wednesday.

Q. What time was high tide on that day, if you know? A. Twelve-thirty.

Q. Do you know whether or not the anchor and chain of the "Mikahala" which were parted and lost Wednesday night has ever been recovered?

A. It has not.

Mr. OLSON.—It has not? A. No.

Mr. WARREN.—Do you know the weight of that anchor that was lost?

A. Sixteen hundred pounds, if I remember right; inch and a half chain.

Q. Inch and a half chain?

A. Inch and a quarter, chain, I mean to say.

Q. What has become of the hawsers that were used by the towing steamers of the Inter-Island Company? Take first the "Mauna Kea"?

(Testimony of J. F. Haglund.)

A. Well, I got part of them in the warehouse yet; about a half of it. I should judge a little more; and the other part been used up for fenders and mooring lines.

Mr. OLSON.—The other part has, you say?

A. Yes. Part of it was lost on the "Celtic Chief."

Mr. WARREN.—About how much of it was lost on the "Celtic Chief"?

A. Well, there was one hundred and fifty feet lost altogether, but a little part of that we got back, may be fifty feet of it or something like that, the rest of it was all lost.

Q. From your experience as a navigator and in connection with towing, can you tell us what the effect of towing upon a hawser is, such as was done at the "Celtic Chief"?

A. What effect it has upon the—

Q. Yes.

Mr. OLSON.—Now, just a moment. I object unless it is limited to some particular hawser. [3017—2186]

Mr. WARREN.—I'm speaking of the general effect of—

The COURT.—I will allow the question put as to general effect.

A. Well, after a strain like it was exerted out on the "Celtic Chief" on a hawser, it is practically useless for any other purpose other than mooring lines in port of Honolulu or for fenders, tying up ropes, or something like that.

Mr. OLSON.—Now then, I move to strike, if the Court please, on the ground it is not responsive.

(Testimony of J. F. Haglund.)

The COURT.—I think it is responsive.

Mr. OLSON.—Then I move to strike on the ground that the answer is multiplicitous; that it calls for a conclusion of the witness without various conditions and facts; and that it is not limited on direct to one general thing.

Now, I move to strike furthermore on the ground that the witness is not qualified to answer in the way that he has answered.

The COURT.—Your objection is overruled.

Mr. WARREN.—I'd like to direct this question to the witness, your Honor. Does your answer to the last question, Captain, include ropes which have been subjected to a short pull?

Mr. OLSON.—Object to the question on the ground it is incompetent, irrelevant, and immaterial; furthermore on the ground that it's uncertain and is not properly limited.

Mr. WARREN.—Then I withdraw the question and I submit that I don't have to put any more on that line.

The COURT.—As long as it is possible for me to apply this answer without limiting it to long and short strains I believe the question and answer, or the question should [3018—2187] be formed in some way to avoid that to make it fair to defendant.

I don't think, Mr. Warren I should leave that question and answer in there when I could apply it in that way, although I wouldn't apply it that way. I don't take the question to mean any short pull at all. Captain Haglund, would you qualify your answer in any way according to the length or time

(Testimony of J. F. Haglund.)

within which pull was made or any other difference?

A. I testified and conditions as were out there or any other similar case, that they would ruin the lines practically for any other purpose than I have already stated.

Mr. OLSON.—Move to strike on the same grounds; witness not qualified to answer and multiplicitous.

The COURT.—I will not rule just now.

Q. Is this result that you have testified to true without any limitation or is it for some time or some condition, the same limit? Is there any degree or condition of strain under which this answer would not be applicable or would it apply in any case?

A. In any case under similar circumstances. I would state where a ship is towing on a fixed object in the seaway it often happens the full tensile strain on the rope may break, which was true in this particular case of the "Mauna Kea." It broke the twelve-inch hawser.

Mr. OLSON.—Move to strike on the ground that it doesn't appear what was the "Mauna Kea's" line. It must be hearsay.

The COURT.—You didn't observe that line?

A. Not at the time it broke. I observed it on the [3019—2188] afternoon it was broken and saw the piece the "Mauna Kea" was pulling.

The COURT.—The answer regarding the "Mauna Kea" may go out.

I don't feel that I can be fair to the defense and leave this question and answer so that I could apply it to any kind of a pull or any kind of duration of strain.

(Testimony of J. F. Haglund.)

Mr. WARREN.—I suggest your Honor ask such questions as may occur to you to bring that out, or I will do so in order to have that answer clear as to what is the kind and under what conditions that result will obtain.

The COURT.—The ruling, I didn't appreciate the point Mr. Olson made later and possibly would apply, or could apply it and possibly would apply although I don't know there is any testimony of any such pull.

Mr. OLSON.—Your Honor then reserves the ruling?

The COURT.—Yes, I'll reserve the ruling.

Mr. WARREN.—Referring to your answer state again, I'll ask you whether it makes any difference whether or not the line is subjected to a long pull or to a short pull. A. It certainly does.

Q. Tell us what difference and what degree of difference?

A. In a short pull you may part a line but still the yarns in the line will not be worn or strained as it will be in a continuous long pull.

Q. So that the rest of that line might be still good?

A. Still good.

Q. Can you tell us anything further about the difference in case the line is not broken?

A. Well, if it's not broken it is just the same. The [3020—2189] longer you tow on a line the more wear the line will have.

Q. Where does the wear come?

A. Right through the line. The yarns powder against one another; in some instances the manilla

(Testimony of J. F. Haglund.)

powders up and is worthless if such strain is put on, the continuous long strain.

Q. Now, in answering the previous question as to the general, as to the effect of pulling such as was done out there at the "Celtic Chief," does your answer relate to a long or a short pull?

A. Relates to a long pull.

Mr. WARREN.—Now I submit that your Honor's point has been made.

Mr. OLSON.—Now, I submit, if the Court please, that the witness has shown conclusively that the length of pull makes a vast difference as to what is to be the result upon the line.

Mr. WARREN.—What do you mean, Captain, by a long pull?

A. Such length of time as our Inter-Island steamers were towing on the "Celtic Chief." It was practically three days and two nights and a half, if I remember right. From Monday morning until Thursday morning.

Q. The "Helene" was two days?

A. The same line as the "Mauna Kea" had.

Q. The "Likelike" was one day. That makes any difference?

A. Well, the "Likelike's" line was not destroyed to a great extent as the "Mauna Kea's" at the same time useless for any other purpose.

Q. Any difference between the size of the lines and the size of the vessel pulling?

A. Certainly, yes.

Q. What that's? A. Yes. [3021—2190]

Q. What is it?

(Testimony of J. F. Haglund.)

A. A big powerful vessel, of course, will strain a line more so than a small vessel with less power on it.

Mr. WARREN.—I submit the answer is entitled to stay in the record, your Honor.

The COURT.—I will grant the motion to strike.

Mr. OLSON.—That motion includes that later answer.

The COURT.—All the later answers, supplemental.

Mr. WARREN.—I object to that, your Honor.

Q. Captain, what is the general effect upon towing lines?

The COURT.—Pardon me just a minute. Mr. Olson, you certainly have no objection to this later answer.

Mr. WARREN.—I'll make no point about that.

Q. When subjected to strain in towing, Captain?

A. A certain deterioration of the line.

Q. How is that caused?

A. By a strain put on it.

Q. What effect does it have on the line itself? What tendency?

A. Lessen the strength, the tensile strain of it, considerably.

Q. How?

A. By the strain that is put on it by towing.

Q. Do you know how it lessens strength, what is the effect on the rope itself to appearances or as to appearance?

A. I don't know as I can explain it with words, but I can bring up samples of the "Mauna Kea" line as it looks now after towing on the "Celtic Chief" and

(Testimony of J. F. Haglund.)

a similar new line—see the difference in it.

Q. What kind of a line did the "Mauna Kea" have when it began pulling? [3022—2191]

Mr. OLSON.—I object unless it appears that this witness does know.

Mr. WARREN.—Do you know?

A. She had a brand new twelve-inch manilla hawser.

Q. How do you know it?

A. Because I saw it. It came out of the warehouse to go on board of that steamer.

Q. Now, will you produce a sample of the same line? Can you? A. I can.

Q. After it was used in this operation?

A. Yes, sir, I can.

Q. Well, will you kindly do so? A. I will.

Q. Upon what does this deterioration depend? How is there any difference between a long and a short pull? A. Yes, there certainly is.

Q. What would you call a long pull?

A. Well, I would call a long pull in length of time from a half day up.

Q. Anything from a half a day up?

A. I should call a long pull, yes.

Q. Well, what is the difference between a long and short pull.

Mr. OLSON.—Just a moment. I object on the ground that the question does not state sufficient facts for the witness to answer; furthermore on the ground that the witness is not qualified to answer.

Mr. WARREN.—Withdraw the question. Why is there any difference between a long and a short pull?

(Testimony of J. F. Haglund.)

A. Well the longer the strain is upon the line, the more wears that the yarns is subjected to.

Q. Where does the wear come on a line subjected to strain? What parts of it? [3023—2192]

A. All parts of it, right through. All yarns. Continuous, long strain on it.

Q. Do you know the appearance of a line inside, opening up the strands, which has been subjected to a long, severe strain? A. I certainly do.

Q. How does it compare with the appearance of a new line of the same kind or character?

A. There is more or less of the manilla powdered up inside.

Q. What powders it? A. The strain on it.

Q. Is there any difference upon a hawser by reason of difference in the amount of strain put on it in a long pull?

A. I don't understand that question.

(Question read.)

Mr. WARREN.—Understand it?

A. I don't understand how to answer it.

Q. Then I withdraw it. Does the amount of strain exerted on a line affect its towing life?

A. Yes, it does.

Q. Do you know the horse-power of the "Mikahala"?

A. Her horse-power, indicated horse-power, is five hundred.

Q. How do you know that?

A. According to the ship's papers.

Q. How do you know that?

A. According to her enrollment.

(Testimony of J. F. Haglund.)

Q. Well, then, assuming, Captain, the power of the "Mikahala" to be five hundred horse-power, to be five hundred, and her line to be an eight-inch line, strained upon for half a day or more, can you tell us what would be the effect upon that line that power being exerted?

Mr. OLSON.—Is the question, can you tell, so it [3024—2193] calls for a yes or no answer?

Mr. WARREN.—What would be the effect?

Mr. OLSON.—Then I object to the question on the ground that it appears that the witness is not qualified to answer; furthermore, on the ground there is no foundation laid; furthermore, on the ground that the hypothetical question does not state all the material facts that are required in order that a proper answer can be given.

I add to the objection the further ground that it is uncertain because it states a half day or more.

Mr. WARREN.—I change that to be a half a day at least.

Mr. OLSON.—Then I object, if your Honor please, there is no testimony that the "Mikahala" ever transferred five hundred horse-power to those lines.

Mr. WARREN.—I'm willing to alter my question to make it four hundred and one instead of five hundred.

Mr. OLSON.—Still I would object.

The COURT.—I'll sustain the objection at this time.

Mr. WARREN.—Captain, did you see the line of the "Mikahala" after the operations at the "Celtic

(Testimony of J. F. Haglund.)

Chief"; both lines? A. I did.

Q. Do you know which was which, which one was used first and which second? There were two lines were there not? A. Yes, two lines.

Q. Were you able to tell by looking at them which was the line which was put on Monday and which was the line which was put on Wednesday?

A. I know the one being cut, that's all.

Q. You saw both of them, however? A. Yes.

Q. Now, what was their condition after that operation? [3025—2194]

Mr. OLSON.—I object to the question on the ground it doesn't appear that the witness is qualified to answer and it's calling for a conclusion of the witness. Before there is any answer to that question I wish to ask some questions as to qualifications.

Mr. WARREN.—Then the Court overrules my objection.

The COURT.—Yes.

Mr. OLSON.—Then I want to ask some questions.

Mr. WARREN.—I object to that.

Recess.

Mr. WARREN.—I'm willing to have that question as to its physical condition.

Mr. OLSON.—That doesn't alter the question at all, your Honor.

Mr. WARREN.—I withdraw my amendment to that question as to the word "physical" and leave it the other way.

Mr. OLSON.—Then I insist on my right to ask the witness as to his qualifications.

Mr. WARREN.—I think, with your Honor's per-

(Testimony of J. F. Haglund.)

mission, I withdraw that question at this time and put some preliminary questions and then put the question again.

The COURT.—Very well.

Q. What practical experience have you had, Captain, in the use and handling of lines of vessels?

A. Oh, I've had all kinds of experience all my life with the ships and ropes; been in the Inter-Island service now about twenty-seven years. I have been twenty-three years master of different steamers, as well as working as shore hand, seeing loads handled, machinery, and certain experience. I could judge a good rope from a bad one or a strained one from a new one. [3026—2195]

Q. As a practical matter is it possible to tell by a physical inspection of a towing hawser whether or not it is of a proper size and strength to be used for a given purpose?

Mr. OLSON.—Object to the question on the ground it doesn't appear that the witness is qualified to answer.

The COURT.—I will allow the question.

A. Yes, sir.

Q. How frequently have you been called upon in your experience to judge of lines having in mind the particular use to which the line is to be put?

A. How often?

Q. How frequently?

A. It happens pretty near every day in our present occupation.